

ELM 543.3

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

ELM 544.112

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

- a. The right to select a physician of choice.*

ELM 545.21

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

EL-505, Section 3.2

Immediately ensure that appropriate medical care is provided: Advise the employee of his or her right to treatment by a USPS contract medical provider or by a private physician or hospital of his or her choice.

EL-505, Section 3.3

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

EL-505, Section 3.9

*Obligation: Ensuring Right to a Free Choice of Physician
Initial medical examination and treatment must be authorized in accordance with FECA provisions and*

applicable OWCP regulations and policies governing medical care. FECA guarantees the employee the right to a free choice of physician.

EL-505, Section 3.10

Authorizing Medical Treatment in a Nonemergency — supervisor or ICCO

Obligation: Authorizing Medical Examination and/or Treatment

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

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

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

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

When a claim is filed in ECOMP, the employee can print and save a copy of the form. As the form is processed, the employee can see the claim form as it is put in the claim file.

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

Claims filed in ECOMP require the Postal Service get a signature on completed claim forms. The claimant should receive a complete copy of the claim form when asked to sign the completed form.

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

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

CA-2 instructions require the supervisor to review and comment on the accuracy of the employee's attached statement. Early knowledge of all such employer objections can help the injured employee counter them effectively from the start.

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

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

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

k. Notice of Controversion and Challenge

OWCP regulations specifically authorize the employer to controvert COP. The regulations also allow the employer to challenge a claim by contesting any of the facts as stated by the injured worker in the report of injury. When the employer does controvert or challenge a claim, OWCP requires it to advise the employee of the challenge and/or controversion and its basis. Postal regulations also require written notification to the employee in all controversions and challenges.

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

Injured workers can look for management's controversions and challenges by searching case imaging via their ECOMP dashboard. If those are found in the case file and no copy has been received, a grievance investigation should be initiated immediately.

20 CFR 10.211(c) requires management to: *Inform the employee of any decision to controvert COP and/ or terminate pay, and the basis for doing so.*

ELM 544.12

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

ELM 545.731

Controversion means to dispute, challenge, or deny the validity of a claim. The Postal Service may controvert a claim by completing the indicated portion of Form CA-1 and submitting detailed information in support of the controversion to OWCP (see 545.75).

ELM 545.75

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

When a claim is controverted, the control office or control point must ensure that the following actions are taken...e. The employee, employee beneficiary, or representative must be furnished with a written explanation for the basis of the controversion.

EL-505, Section 8.5

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

EL-505, Appendix C defines challenge and controversion:

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

Controversion: The formal administrative procedure through which USPS management presents evidence to OWCP to dispute an employee's claim for COP.

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

I. Improperly contacting a carrier's physician

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

In too many cases, local supervisors ignore the prohibition against telephone or personal contact with the physician.

This often results in problems for the injured worker. In some cases, the supervisor misreports the physician's words.

In other cases, the physician becomes aggravated at management's harassment and refuses to provide care in the future to federal employees with workplace injuries. Injured workers benefit when their physicians provide written recommendations concerning work restrictions.

Written limitations are less likely to be misunderstood by the employee or management. When management has legitimate questions about work restrictions, clarity is best served, again, when the Postal Service's questions and the physician's answers are committed to paper.

20 CFR 10.506 states:

To aid in returning an injured employee to suitable employment, the employer may also contact the employee's physician in writing concerning the work limitations imposed by the effects of the injury and possible job assignments.

However, the employer shall not contact the physician by telephone or through personal visit.

ELM 545.52

To aid in returning an injured employee to suitable employment, the control office or control point may also contact the employee's physician in writing concerning the work limitations imposed by the effects of the injury and possible job assignments. However, FECA prohibits contacting the physician by telephone or through a personal

visit except for administrative purposes such as determining whether a fax has been received or ascertaining the date of a medical appointment.

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

Prearbitration settlement A94N-4A-C 97019738 (M-01428):

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

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

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

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

m. Failing to provide copies of written contacts with physician

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

In many cases the Postal Service does not provide the required copies to OWCP and the employee. Disputes about limited duty and work restrictions are more difficult to resolve when an employee is in the dark about the Postal Service's communications to and from their doctor.

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

20 CFR 10.506

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

ELM 544.12

The control office must provide the employee a copy of all correspondence between the Postal Service and the treating physician.

ELM 545.52

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

EL-505, Section 6.3

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

n. Delaying forwarding of CA-7 to OWCP

Form CA-7, Claim for Compensation, is used for claiming compensation for wage loss due to an on-the-job injury. Employees complete the front side and submit it to the employer.

The employer completes the reverse and forwards it to OWCP. When OWCP does not timely receive CA-7s, employees suffer delayed payment of benefits.

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

CA-7s should be filed via the employees ECOMP dashboard. The injured worker can track the form's submission to OWCP via the dashboard. If the form has not been forwarded to OWCP within the required 5 working days, a grievance investigation should be initiated.

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

Upon receipt of Form CA-7 from the employee...the employer shall complete the appropriate portions of the form. As soon as possible, but no more than five working days after receipt from the employee, the employer shall forward the completed Form CA-7 ...to OWCP.

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 pre-scribed FECA time frames.

ELM 545.82d

The control office or control point forwards the completed Form CA-7 and any other accompanying medical reports to OWCP within 5 working days upon receipt from the employee.

Despite this crystal-clear language, the Postal Service often fails to timely submit Form CA-7 to OWCP. It can be difficult for stewards to determine whether a form has been transmitted to OWCP within the time limits. The solution is for injured workers to request, in writing, a completed copy of each CA-7 at the time they submit the form.

CA-7s filed through ECOMP provide a tracking number allowing injured workers to track the form once submitted to the Postal Service. If the supervisor (or the Postal Service District Injury Compensation Specialist) returns the form to the filer for resubmission, the steward should investigate and file a grievance.

OWCP's regulations do not require the employer to provide a completed copy of Form CA-7. However, the Privacy Act gives employees a general right to any information which the Postal Service files under their name or other identifying means.

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

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

If management does not provide a copy of the CA-7, as often happens, the employee should request to see his steward regarding violation of AS 353. The steward's investigation of that violation should include a request for a copy of the CA-7.

o. Failing to provide a job offer

OWCP regulations stipulate that if an employee cannot return to the job held at the time of injury due to partial disability from the effects of the work-related injury but has

recovered enough to perform some type of work, they must seek work.

ELM 546.142 requires the Postal Service to *make every effort* toward assigning the employee to limited duty consistent with the employee's medically defined work limitation tolerance.

The two major types of limited duty violations thus can be identified as: 1) Denial and Withdrawal violations and 2) Pecking Order violations.

Denial and Withdrawal violations occur when limited duty is available but not offered, and/or when limited duty is improperly withdrawn.

Pecking Order violations occur when management provides limited duty, but does not attempt to minimize the adverse impact on the injured carrier. An example would be if limited duty is provided at another station when it was available at the carrier's bid station.

Some cases could involve a combination of a Pecking Order violation and a Denial violation. Example: four hours of limited duty is offered on tour three when the injured carrier could have worked eight hours on his/her regular schedule.

A limited duty grievance will need proof that the grievant is entitled to limited duty. Grievance officers will need the OWCP letter acceptance letter, the worker's CA-17 indicating their medical restrictions and all correspondence concerning limited duty job offers.

p. Improper Job Offers

The Postal Service's requirement to make every effort in finding work for injured letter carriers often result in job offers that exceed the employee's medical restrictions. If the employee refuses the job offer, OWCP will decide whether or not the job offer was suitable given the employee's medical restrictions.

"Suitability" is a term of art within OWCP that specifically refers to the determination made by OWCP that the job offer complies with the work restrictions derived from the medical evidence to which it has given weight.

While we cannot grieve the suitability determination made by OWCP, we certainly can investigate and grieve whether the job offer made by the Postal Service is appropriate.

OWCP takes the Postal Service's word at face value that the described duties in the job offer fall within the accepted restrictions. Often this is not the case.

For example, NALC has seen many cases where the restrictions impose zero twisting, bending, or stooping; and the job offer includes casing and carrying mail with just some auxiliary parcel help. In such cases we should be grieving the fact that the Postal Service is misrepresenting the actual job duties. A remedy in such cases might include a retraction of the job offer and a letter from the Postal Service to OWCP explaining that the offered duties, in fact, fall outside the injured worker's restrictions.

Appropriateness would also include whether or not the job offer meets the Postal Service's obligations under ELM 546 and the National Agreement. While OWCP could care less about such distinctions, we should vigorously grieve these violations.

The FECA provides several avenues to appeal their decisions including – appeals to the Branch of Hearings and Review, Reconsideration requests, and appeals to the Employees' Compensation Appeals Board (ECAB). Decisions from these appeals are also non-grievable.

ELM Section 546.142 requires the Postal Service to “make every effort” to find work within the injured employee's medical restrictions.

ELM Section 545.31 instructs the supervisor or manager who *authorizes medical care to advise “the employee, in writing, of the obligation to return to work as soon as possible... “Return to work” refers to work in the employee's bid assignment or work in other locations and positions.*

Notification to the employee must include the following

- If a specific alternative position is available, the supervisor/manager must advise the employee in writing of the specific duties and physical requirements of the position.*
- If no specific alternative position is necessary, the supervisor/manager should advise the employee of any change the agency can make to the employee's permanent assignment to accommodate the employee's limitations due to the injury.”*

Postal Handbook EL-505 Section 7-4 directs managers to *“consult with the occupational health nurse, contract physician or the treating physician”* (in writing) to ensure that the limited duty assignment is consistent with the injured worker’s medical restrictions. This may or may not happen, and job offers may sometimes exceed the employee’s limitations.

Injured workers are often given job offers and told they must immediately accept the job offer or they will be sent home in a non-pay status. While this is a violation of postal regulations and handbooks, the injured worker should never refuse the job offer. They should instead review the job offer with their supervisor or manager.

The Postal Service normally makes a job offer on PS Form 2499. Section I of the form contains employee information, Section II contains the hours and duties of the job, and Section III is where the employee can accept or refuse the job offer. Just above the place to accept or refuse the job offer, Section III of the 2499 states:

“Supervisor/manager should discuss this Offer of Modified Assignment (Limited Duty) and the duties of the assignment with the employee. If the employee has concerns (e.g. task, work location, or medical limitations) not addressed with this offer of Modified Assignment (Limited Duty), the supervisor/manager should discuss the concerns with the employee and, if possible, suggest alternatives. If the employee raises additional medical issues such as disability or seeks a reasonable accommodation, the supervisor/manager, must engage in an interactive discussion with the employee (see

Handbook EL-307, Reasonable accommodation, An Interactive Process” for specific guidance). These discussions must be documented on page 2, Section IV of this form.”

Postal and federal regulations allow the injured worker to take the job offer to their attending physician. Injured workers who get a job offer where some of the duties may exceed their medical limitations should accept the job offer (under protest), do what work they feel is within their medical limitations and take the job offer to their physician for review.

Accepting a job offer that may exceed an injured worker’s medical restrictions does not waive the opportunity to contest the propriety of the job offer through the grievance procedure.

Acceptance “under protest” M-01120 MOU January 29, 1993:
By accepting a limited duty assignment, an employee does not waive the opportunity to contest the propriety of that assignment through the grievance procedure, whether the assignment is within or out of his/her craft.

Contract enforcers should never grieve the “suitability” of a job offer. The term “suitability” is an OWCP determination and suitability determinations cannot be grieved.

A contract enforcer can grieve whether a job offer is “appropriate” per the procedures outlined in Section 7-4 of the EL-505.

q. Withdrawal of Limited Duty job offer

Limited duty is work provided for an employee who is temporarily or permanently incapable of performing their normal duties as a result of a compensable injury or illness. The Postal Service's withdrawal of a limited duty job often causes a chain of events that are often harmful to the injured employee. To protect our injured brothers and sisters, it is imperative that stewards vigorously enforce Postal Service's obligations to provide limited duty work.

The Postal Service has strong legal and contractual obligations to make every effort to provide limited duty while minimizing any adverse impact on the injured employee. Those obligations are spelled out at ELM 546.142 which also establishes a pecking order that the Postal Service must follow in providing limited duty work that is conveniently outlined on page 146 of the Postal Service Injury Compensation Manual, the EL-505.

An employee may be offered a limited duty assignment that meets OWCP's suitability requirements but fails to meet the requirements of the ELM. In such cases, the employee should accept the assignment but grieve the ELM violations.

Limited duty grievances fall into three broad classes that often are intertwined:

1. Withdrawal of limited duty
2. Failure to provide limited duty
3. Failure to follow the ELM 546.14 pecking order

Winning limited duty grievances requires well-documented case files with evidence specific to the case. The steward should obtain this evidence from the injured letter carrier, their coworkers, and from the Postal Service.

The steward for all three classes of grievances should document what limited duty (LD) work is available within the ELM pecking order. In withdrawal cases, the steward should also document the work that previously had been performed by the injured worker and where that work went.

1. Information that should be obtained from the injured letter carrier

a. The OWCP case file:

- File may contain information that supports injured worker's ability to work.
- Information regarding acceptance of OWCP claim.
- Job offers
- Communications between postal service and OWCP.
- Information that could affect wage-loss compensation such as a loss of wage earning capacity (LWEC).
- You will need a signed Privacy Act waiver from the injured carrier to obtain and use documents from the OWCP file.

b. A detailed and specific statement from the injured letter carrier:

- Duties performed daily while on limited duty
- Duties performed historically while on limited duty
- Who performed the work after it was withdrawn

- How the withdrawal of work has harmed the injured carrier and their family – financially, and emotionally.

2. Information that should be obtained from the injured worker's coworkers

- Detailed and specific descriptions of the limited duty work performed by the injured worker.
- Descriptions of work historically done by injured workers in the office.
- Descriptions of possible work to be done by the injured worker.
- Cookie cutter or boilerplate statements are not effective.

3. Information that should be obtained from the Postal Service via written request

a. The work search:

- Any and all information related to the Postal Service's work search
 - Copies of all forms and documents connected with the work search
 - Who conducted search
 - Were searches conducted daily, weekly, monthly, or when employee's restrictions changed
 - How far did the Postal Service search for work
 - The offices searched, the dates searched and the names of who was contacted
 - Restrictions the Postal Service used in its work search
 - Copies of all correspondence involved in the work search including emails, and phone records
 - Interviews with all managers involved in the work search

4. Documenting the available work through management:

- Interview supervisors regarding work the injured carrier performed and who was assigned the work now that the carrier has been sent home
- Document the work that was done on LD:
 - TACS reports covering the grievant's daily work for the entire period of limited duty work
 - Schedules – as above
 - Written Limited Duty Job Offer (LDJO) or Rehabilitation Assignment the Postal Service Withdrew
 - Current Medical Restrictions of Injured Employee
 - Written Notice from Management that LDJO or Rehabilitation Assignment is Withdrawn
 - All Prior LDJO's and/or Rehabilitation Assignments
 - Any Past Medical Restrictions
 - PS Form 50's
 - Overtime Alert Reports for All Employees in Office (Before and After Carrier Sent Home)
 - Employee Everything Reports for All Employees in Office (Before and After Carrier Sent Home)
 - Weekly and Monthly Flash Reports (Before and After Carrier Sent Home)

Using the above information, the steward should argue the case through showing the limited duty work the injured employee had been performing, where that work went, and what work is currently available.

It must be stressed here that the most important documents in any limited duty grievance file are the Article 17 & 31 information requests. The requests should be in writing and included in the file. Regional arbitrators have overwhelmingly

held that in ELM 546.142 cases, once the Union has established that the injured employee has been compensably injured, the burden shifts to the Postal Service to demonstrate that it made every effort to search for work within the parameters of the pecking order. By requesting the Postal Service to fully document in the grievance process its efforts to find limited duty work, the door will be closed at arbitration for the Agency to embellish or exaggerate those efforts.

Possible remedies in limited duty cases should include making the grievant whole for all lost wages and benefits, including but not limited to, annual and sick leave (lost and used), Thrift Savings Plan (TSP) benefits, out of schedule premium (if applicable), and overtime pay (if applicable) for the time frame of the grievance and ongoing.

Resources for Contract Enforcers

The “Injured on the Job” page on the NALC website, nalc.org/workplace-issues/injured-on-the-job, has links to:

- *USPS Handbook EL-505, Injury Compensation*
- *USPS Employee Labor Relations Manual (ELM) section 540 Injury Compensation Program.*
- The NALC/OWCP folder – Branches can order OWCP folders from the NALC’s supply department by calling 202-393-4695.
- OWCP National Office – 202-613-6860
- *Title 5 United States Code Section 8101 (5 U.S.C. 8101) —the Federal Employees’ Compensation Act (FECA);*
- *FECA -*
<https://www.dol.gov/agencies/owcp/FECA/regs/statutes/feca>
- *FECA Procedure Manual - Chapter 2-0807, Continuation of Pay and Initial Claims for Compensation*
<https://www.dol.gov/agencies/owcp/FECA/regs/compliance/DFECfolio/FECA-PT2/group2#20807>
- *Title 20 Code of Federal Regulations Section Chapter 10 (20 C.F.R. 10)- Electronic Code of Federal Regulations -PART 10—CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT, AS AMENDED.* <https://www.ecfr.gov/>

Grievance Starters

The following grievance starters can be found in the members-only portal at nalc.org. After logging into the members-only portal, go to Member Documents, then the OWCP tab to access the word documents. The name of the grievance starters follows in parentheses if different than the description of the issue.

1. Choosing what claim form to file
2. Failure to provide a CA-16
3. Failing to pay the employee on day of injury (Failure to Pay IW on DOI)
4. Failing to pay COP (Failure to Provide-Process COP)
5. Improperly calculating CCA COP and Wage-Loss Compensation (Improper Calc CCA COP WLC)
6. Failing to provide OWCP with pay rate information (Fail to Provide Pay Rate Info)
7. Providing a CA-2a instead of a CA-1 or CA-2 (Providing a CA-2a vs CA-1 or 2)
8. Delaying forwarding of CA-1 or CA-2 to OWCP
9. Failing to advise carrier of the right to choose a physician (Right to Choose a Physician)
10. Failing to provide completed copy of CA-1 or CA-2
11. Failing to give notice of Controversion and Challenge (Notice of Controv./Challenge)
12. Contacting a carrier's physician in person or by phone (Improper Contact of Physician)
13. Failing to provide copies of written contacts with physician (Fail Contacts with Physician)
14. Delaying Forwarding of CA-7 to OWCP
15. Failing to provide a job offer (Limited Duty-

Withdrawal LDJO)

16. Improper Job Offers (Misrepresented Job Offer)

**17. Withdrawal of Limited Duty job offer (Limited Duty-
Withdrawal LDJO)**