

Watch your back

## Showing injured carriers the door

By Bill Thornton, Vice President

The *National Reassignment Pilot Program* has come to San Francisco and soon in Novato. The program is being tested in New York and the Pacific Area prior to national implementation. The program began in San Diego in October 2005, where medical reassessments were done on 300 letter carriers, clerks, etc.

The purpose of the program is to take injured workers off the Postal Service Payroll and dumping them on OWCP, where they are then trained for jobs outside the Postal Service.

The savings to the Postal Service, and at the same time the threat to injured employees, lies in the savings that are gained because the Postal Service no longer has to pay various benefits: retirement, TSP contributions, health insurance, life insurance, etc. Only the differences in pay that the employee was making in the Postal Service job and the job outside have to be equalized.

The Postal Service has asserted that all regulations will be followed, including compliance with the Federal Employees Compensation Act ( FECA), the Code of Federal Regulations (CFR), the Employee Labor Relations Manual (ELM), the Rehabilitation Act of 1973 etc.

Under the Rehabilitation Act 1973 5CFR Section 353.301, before employees can be moved to the private sector there must be attempts to provide work within the commuting area.

Branch 214's first experience with this has been at 180 Napoleon, probably chosen as the first site because of the large number of injured employees, etc.

Postal Service commitment to follow rules and regulations has already been compromised. The first step was for the Postal Service coordinator to scrutinize employee medical limitations, CA-17s, existing job offers, etc. Management has a right to do this. But typical of the current administration they immediately ignored some regulations.

### A bad start - management plays doctor

20CFR10.516 is the controlling legal authority in the matter of procedures relating to job offers.

Employee compensation benefits can only be terminated by OWCP after it finds the job suitable. This is only done after the Postal Service notifies OWCP that the employee does not accept a job offer. OWCP then notifies the employee if they find the job suitable according to medical limitations. Employees have up to 30 days before their benefits are terminated.

At 180 Napoleon carriers are given job offers and told that they must sign on the spot.

Management tells employees that their medical restrictions are not recognized and they must perform full duties. This is in violation of rules and regulations that are part of Federal Law, as well as handbooks and manuals that are part of the contract. Management must follow these regulations, including Article 14 that requires management to maintain a safe workplace.

### Postal Record article

Particularly informative and a perspective is given in Ron Watson's November 2005 "Postal Record" article, *Outplacement developments*. He writes: "...the Postal Service has no authority to outplace any employee. Only OWCP has such authority."

Another important reference in these regards is found in a Watson May 2006, "Postal Record" article, **Rehabilitation job offers**: The Postal Service has legal (as in 5 CFR 353 *Code of Federal Regulations*) and contractual responsibility (as in 546.14 ELM *Employee Labor Relations Manual*) to make very effort to find modified work for compensably injured employees. 546 ELM references a *pecking order* and management's responsibility to *minimize adverse impact* on injured employees by keeping them within *craft, tour and facility*. Watson cites Arbitrator Bernstein as indicating management's continuing and ongoing responsibility, and contradicts the notion that management has the right to *wash its hands* of an injured employee.

In reference to Postal Service responsibility towards injured employees, Mr. Watson cites an August 19, 2006 letter from Postal Service management to National NALC President Young. It indicated management compliance with 546 ELM, Rehabilitation Act, etc. to make every effort to provide limited duty, even when the employee's medical restrictions do not allow him/her to perform street duties, and less than 8 hours limited duty work is available.

### **Other protections**

Employees have various protections in different arenas, including the grievance/arbitration procedure, EEO, *Equal Employment Opportunity*, primarily in conjunction with *The Rehabilitation Act of 1973*, and MSPB, *The Merit Systems Protection Board*, under entitlements found in 5 CFR 353.

Injured Postal Service employees were shown the door in San Diego in February 2006, told to hand in badges and clean out lockers and given CA-7s *Claims for Continuing Compensation*.

While this is a part of the sad history of this program there is a basic simple lesson here. If the Postal Service does not provide an employee with a compensable on the job injury with work, then that employee is entitled to compensation by OWCP. If you have an accepted OWCP claim, and management does not provide you work, you are entitled to be paid by OWCP the same as if you were disabled and unable to work. Except in the case of no work provided, you must indicate so on the CA-7s and on the Leave Slip 3971, checking LWOP, and writing OWCP/Compensation.

**CA-7:** You fill out 1 through 7-a to c providing the employee with instructions. Management is to complete Sections 8 through 15. The form must be forwarded to OWCP in 5 days. Management has this responsibility, and the failures are chronic in this regard. 545.82 of the ELM, as well as the Code of Federal Regulations. If a breakdown of hours is required because of intermittent periods of disability, a breakdown on CA-7A is required. Here's where we run into big difficulties. A Step B Decision of San Francisco expounded on the respective responsibilities of the employee and the management: " Every two weeks during the time when ...is requesting compensation, he is to complete sections 1 to 7 and submit to the supervisor. Upon receipt of a properly completed CA-7 from the employee, management is to complete its part (Sections 8 through 15) and forward the form to OWCP in 5 working days. The sections the employee is required to fill out do not ask for a daily breakdown of the hours. It is management's part of the form, which...it completes after the receipt of the form...that requires this information.... Once an employee submits to management a CA-7 with Section 1 through 7 completed, the responsibility falls upon management to complete the rest of the form, including Section 9 which requires a daily breakdown, and submit the form to the Department of Labor."

### **If you are shown the door anyway**

In the scenario that the injured carrier is not provided work where a CA-1 was filed, check continuation of pay on the CA-1, and don't allow management to get you to take SL instead of COP. Indicate "**did not provide work**" on the paperwork.

In either case, before you are shown the door, get at the minimum your guaranteed 5 minutes with a steward, and file a grievance on management not providing work, and the violation of their various legal and contractual responsibilities in these regards. Adequate time on the clock should be subsequently arranged for the carrier and steward. It also becomes documentation that you were indeed *not provided* work.

While there are many management responsibilities in this regard and avenues of redress for employees whose rights are violated, there are also some safeguards that employees may utilize themselves. As we have seen in the initial atrocities at 180 Napoleon, it is important to have clear up to date medicals and CA-17s that are filled out properly.

Carriers that can perform/return to some/all carrier duties are encouraged to do so if medically practicable. Sometimes employees make insulting remarks about injured carriers. I am assuming that none of us have medical degrees that qualify us to make these decisions. The decisions concerning carriers with on the job injuries including work limitations are between the employee, the doctor and OWCP.

The same previous warnings hold true in regards to not violating your medical restrictions on or off the clock. While all this is coming down there is no reason to believe that the Office of Inspector General, Postal Inspectors, etc. are not out doing what they do.

### **Continuing rights**

At this point it is worthwhile to indicate that it is proper for an injured employee to go to doctor and therapy appointments, etc. during work hours. This requires the use of Form 3971 and indicating on the form that compensation is being used.

Employees should stay away from using their own leave when they should be using either COP or Compensation, as the case may be. Many times injured employees use sick leave instead of choosing LWOP, and wait for the Department of Labor to pay them, and then later "buy back" the leave after the DOL pays them. This complicates the process, necessitating further paperwork when the buy back is done. It also is chancy. The Postal Service does not allow employees to buy back leave unless it was used before the claim was adjudicated.

For purposes of payment of the treating physician there is Form CA-16-"Authorization for Examination and/or Treatment". Management should provide you with the CA-16 within (4) hours.

ELM 545.21 indicates management responsibility to provide this form and also indicates the responsibility to inform injured employee of right to choose own doctor. These requirements are also in 20CFR 10.300, the Code of Federal Regulations that is the basis for Postal Service compliance with OWCP regulations under 540 ELM, etc.

Other manuals that cover these subjects are also CA-810 Injury Compensation for Federal Employees and Handbook EL-505.

For further information on these and other union issues go on NALC.org.

There are also other useful sites with information on the *Pilot Program* that you can search for on the internet.

Source: Branch 214's *The Voice* September/October 2006