

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,)
 U.S. DEPARTMENT OF LABOR,)
)
 Complainant,)
)
 v.)
)
 UNITED STATES POSTAL SERVICE,)
)
 Respondent.)

OSHRC DOCKET NO. 15-2004

STIPULATION AND SETTLEMENT AGREEMENT

The Secretary of Labor, United States Department of Labor, hereinafter referred to as the “Secretary,” and the United States Postal Service, hereinafter referred to as “Respondent,” stipulate and agree as follows:

I. Based on a reevaluation of the evidence and a reconsideration of the statutory factors on which the proposed penalty is determined, the Secretary hereby amends the Citation and Notification of Penalty as follows:

Citation/Item	Proposed Penalties	Amended Penalties	Other Amendments
1-1	\$7,000	\$0	Citation 1, Item 1 shall be withdrawn.
2-1	\$38,500	\$7,000	Citation 2, Item 1 shall be reclassified as “serious”. Additionally, the Citation and Notification of Penalty shall be amended as shown in Appendix 1.
3-1	\$1,100	\$1,000	The classification for Citation 3, Item 1 shall remain “other than serious” as issued. Additionally, paragraph (b) shall be stricken from the Citation and Notification of Penalty, and the following phrase shall be inserted in paragraph (a): “The employee informed the supervisor he would not be in because he was still feeling sick from the day before.”

The Citation and Notification of Penalty is deemed amended accordingly.

2. Respondent hereby withdraws its notice of contest to the citations and the proposed penalties, as amended herein. In support of its withdrawal, Respondent states:

a. That the abatement of Citation number 2 and 3 will be accomplished within thirty (30) calendar days from the date on which Respondent executes this Agreement, which shall be the final abatement date for said citations. Respondent will comply with all applicable abatement verification provisions of 29 C.F.R. § 1903.19, including but not limited to all certification, documentation, and posting requirements. Abatement certification shall be accomplished within ten (10) calendar days after the abatement date by mailing a letter to Larry Davidson, Area Director, Des Moines Area Office of the Occupational Safety and Health Administration, stating that abatement has been completed, the date and method of abatement, and that affected employees have been informed of the abatement. Any required abatement documentation shall be submitted along with the abatement certification;

b. That affected employees are represented by the National Association of Letter Carriers and that a copy of this Stipulation and Settlement Agreement has been served on Michael Birkett, National Business Agent for the NALC, by prepaid, first class mail this _____ day of _____. A copy of this Stipulation and Settlement Agreement will also be posted at Respondent's workplace at 616 West 2nd Street in Ottumwa, Iowa 52501.

c. That it will tender payment of the total penalty of \$8,000.00 to the Secretary's representative at the Des Moines Area OSHA Office within thirty (30) calendar days from the date on which Respondent executes this Agreement. Failure to make this payment when due will cause the original penalty of \$46,600.00 to be immediately due and payable. The parties agree that any unpaid balance under this agreement is a debt owing to the United States and is subject to the Debt Collection Act of 1982 (Public Law 97-365) and the Debt Collection Improvement Act of 1996, 31 U.S.C. §§ 3701-3719.

3. The Secretary and Respondent agree that based on the foregoing representations of Respondent, an order may be entered of record showing that Respondent has withdrawn its notice of contest and entering the citations and notifications of proposed penalty, as amended herein, as a final order of the Commission.

4. Further, each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding, including but not limited to, attorney's fees, costs, and other expenses which may be available under the Equal Access to Justice Act (5 U.S.C. § 504), as amended.

Dated this 11th day of July, 2016.

M. Patricia Smith
Solicitor of Labor

Christine Z. Heri
Regional Solicitor

H. Alice Jacks
Associate Regional Solicitor

UNITED STATES POSTAL SERVICE



Deborah M. Levine
1745 Stout Street, Suite 500
Denver, CO 80299



Traci Martin
2300 Main St., Suite 1020
Kansas City, MO 64108

Attorneys for Respondent

*Attorneys for Secretary of Labor
U.S. Department of Labor*



Citation and Notification of Penalty

Company Name: U.S. POSTAL SERVICE
Inspection Site: 616 W. 2nd Street, Ottumwa, IA 52501

Citation 1 Item 1 Type of Violation: **Serious**

29 CFR 1910.151(b): There was neither an infirmary, clinic, or hospital used for the treatment of all injured employees in near proximity to the workplace nor a person or persons adequately trained to render first aid:

- (a) The US Postal Service relies on city and rural carriers to use their personal cell phone to summon first aid and emergency help. Employees stated that at times the cell phones do not have reception in some areas where a call could be made and at times, employees do not carry their cell phones during extreme weather conditions as the phones do not work; thereby with no access to a person or person who are adequately trained to render first aid. An example occurred on or about July 8, 2015, employees of the US Postal Service, Ottumwa, IA who delivered the mail did not carry their cell phones.

Abatement certification is required for this violation (using the CERTIFICATION OF CORRECTIVE ACTION WORKSHEET), and in addition, documentation demonstrating that abatement is complete must be included with your certification. This documentation may include, but is not limited to, evidence of the purchase or repair of the equipment, photographic or video evidence of abatement, or other written records.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	11/04/2015
Proposed Penalty:	\$7000.00



Citation and Notification of Penalty

Company Name: U.S. POSTAL SERVICE
Inspection Site: 616 W. 2nd Street, Ottumwa, IA 52501

Citation 2 Item 1 Type of Violation: **Repeat**

OSH ACT of 1970 Section (5)(a)(1): The employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were exposed to excessive heat where the afternoon heat index was 100 degrees or more while delivering the U.S. mail. Such exposure(s) may lead to serious and life-threatening heat-related illnesses such as heat stroke, heat exhaustion heat syncope, heat cramps, heat rash, and transient heat fatigue:

On or about June 9, 2015 through June 10, 2015, the National Weather Service issued a heat advisory. The seasonal elevated ambient outdoor temperatures were increasing throughout the day of June 10, 2015 and the afternoon temperatures reached 92 degrees Fahrenheit with humidity level of 55% creating a heat index of 101 degrees Fahrenheit. Employees of United Postal Service (USPS) Ottumwa, IA were exposed to these high levels of ambient heat during the performance of their duties while delivering mail to customers at job sites located on mail routes in and around Ottumwa, Iowa:

- (a) A city carrier assistant (CCA) had not become acclimatized to walking and delivering mail in excessive heat, as June 9 and June 10, 2015 were the first excessive heat workdays in the 2015 mail delivery season. Beginning at approximately 8:30 am, on June 10, 2015, the employee walked in the heat and direct sun on mail Route #9 carrying a mail bag weighing up to 35 pounds and at times working from an enclosed vehicle without air-conditioning. At approximately 12:00 pm, a co-worker of the employee saw the CCA at a gas station and noticed that that the employee was very pale with clammy skin. At approximately 2:00 pm, the CCA requested assistance from the Acting Postmaster in completing the routes delivery because due to the heat the CCA could not walk at a fast enough pace to complete it on time, but the employee was told that heat is worse in other parts of the world, "how hot do you think it is in Afghanistan", and to just keep going. By the time the employee was relieved at approximately 5:00 pm, the symptoms of heat induced illness were experienced so acutely to cause shaking and continued into the next day that the CCA called in sick the next day in order to recover.
- (b) A city postal carrier had not become acclimatized to walking and delivering mail in excessive heat, as June 9 and June 10, 2015 were the first excessive heat workdays in the 2015 mail delivery season. Beginning at approximately 8:30 am on June 10, the employee walked in the heat and direct sun carrying mail and at times working from an enclosed vehicle without air-conditioning. At approximately, 11:00 am, the carrier reported to the Acting Postmaster that assistance would be needed as the employee was behind 45 minutes due to the heat, but the employee was told better hurry up.
- (c) Another city postal carrier had not become acclimatized to walking and delivering mail in

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



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Company Name: U.S. POSTAL SERVICE
Inspection Site: 616 W. 2nd Street, Ottumwa, IA 52501

excessive heat, as June 9 and June 10, 2015 were the first excessive heat workdays in the 2015 mail delivery season. Beginning at approximately 8:30 am on June 10, the employee walked in the heat and direct sun carrying a mail bag weighing up to 35 pounds and at times working from an enclosed vehicle without air-conditioning. The employee stated that symptoms of heat induced illness were experienced that day while delivering on mail Route #19 and returned home exhausted.

- (d) On or about July 13, 2015, Central Iowa, including Ottumwa, IA was under an Excessive Heat Advisory from the National Weather Service. The seasonal elevated ambient outdoor temperatures were increasing throughout the day from 83 degrees Fahrenheit at 9:00 am with 85% humidity and a heat index of 92 degrees Fahrenheit to afternoon temperatures reaching 92 degrees Fahrenheit with humidity level of 68% and a heat index in excess of 105 degrees Fahrenheit.

Another city carrier assistant (CCA) walked in the excessive heat and direct sun carrying a mail bag weighing up to 35 pounds and at times working from an enclosed vehicle without air-conditioning to deliver mail on Route #9 to approximately 600 customers. The CCA developed heat exhaustion and dehydration and when called in to report shooting pains in the head and chest, as well as nausea, was taken to the hospital for treatment in response to exposure of high levels of ambient heat.

The employer failed to develop and implement an adequate and effective heat stress program in accordance with the National Institute for Occupational Safety and Health (NIOSH) document, "Working in Hot Environments.", specifically in the following instances:

- a. The employer failed to acclimatization employees, especially those who had minimal time working or walking in direct sun on routes that took up to 40 minutes to complete.
- b. The employer failed to develop and implement measures to effectively reduce employee exposure to conditions that posed a risk of inducing heat-related illness. The employer did not have a work-rest regimen or an employee rotation program for this purpose.
- c. The employer failed to ensure workers required to work in seasonally elevated ambient temperatures hydrated on a continuous basis throughout their respective work shifts.
- d. The employer did not develop and implement effective employee heat stress monitoring including environmental measurements while employees worked in conditions that posed a risk of inducing heat-related illness.

Among other methods, one feasible and acceptable abatement method to correct this hazard is to establish a Heat Stress Management Program which incorporates guidelines from the ACGIH's Threshold Limit Values and Biological Exposure Indices and/or the National Institute for Occupational

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Citation and Notification of Penalty

Company Name: U.S. POSTAL SERVICE
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Safety and Health(NIOSH) document, "Working in Hot Environments." Such a program may include, but is not limited to:

1. Providing a work-rest regimen that allows the body to cool in between work activities, such as but not limited to cool, climate-controlled areas where heat-affected employees may take breaks frequently, such as 15 minutes/60 minutes of work to prevent heat-related illnesses.
2. Re-training management not only about the effects of heat-related illness, specific to recognizing, monitoring and reporting heat-related illness symptoms but to ensure employees were monitored while on the routes during high heat days in order to prevent heat-related illnesses.
3. Ensuring that employees were provided ample opportunity to acclimatization to the heat to develop a heat acclimatization program for new employees or employees returning to work from absences of three or more days or when employees not acclimatized to the heat substituted for employees on leave.
4. Monitoring, encouraging and permitting employees to drink fluids frequently throughout their work shifts when providing adequate amounts of cool, potable water in the work area
5. Conducting environmental heat stress exposure monitoring.

The U.S. Postal Service was previously cited for a violation of OSH ACT of 1970 Section (5)(a)(1) , which was contained in OSHA inspection number 917092, citation number 1, item number 1 and was affirmed as a final order on 04/30/2014, with respect to a workplace located at 20 Forest Street, Medford, MA 02155.

The U.S. Postal Service was previously cited for a violation of the OSH ACT of 1970 Section (5)(a)(1), which was contained in OSHA inspection number 538158, citation number 1, item number 1 and was affirmed as a final order on 10/24/2014, with respect to a workplace located at 3525 South Cottage Avenue, Independence, MO 64055.

Abatement certification is required for this violation (using the CERTIFICATION OF CORRECTIVE ACTION WORKSHEET), and in addition, documentation demonstrating that abatement is complete must be included with your certification. This documentation may include, but is not limited to, evidence of the purchase or repair of the equipment, photographic or video evidence of abatement, or other written records.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated: 11/12/2015
Proposed Penalty: \$38,500.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: U.S. POSTAL SERVICE
Inspection Site: 616 W. 2nd Street, Ottumwa, IA 52501

Citation 3 Item 1 Type of Violation: **Other-than-Serious**

29 CFR 1904.29(b)(3): The employer did not enter each recordable injury or illness on the OSHA 300 Log and 301 Incident Report within seven (7) calendar days of receiving information that a recordable injury or illness had occurred:

- (a) On or about June 9-10, 2015, Central Iowa was under a heat advisory with heat indices in the the upper 90s and low 100s. An employee delivering mail on Route #9 at approximately 2:00 p.m. was feeling ill because of the heat, requested assistance from the Acting Postmaster in completing the route's delivery and was told to continue working. Although this employee was relieved at around 5:00 p.m., the employee continued to experience symptoms of heat induced illness the next day and called in sick. The incident was not recorded as a lost work day on the US Postal Service 300 log nor was an incident investigation conducted.

- (b) On or about July 13, 2015, Central Iowa was under a high heat advisory with heat indices in the upper 90s and low 100s. An employee delivering mail on Route #9, at approximately 13:55, called in with shooting pains in head and chest and nausea. The employee was taken to the Ottumwa Emergency and was given IV fluids and was removed from work until July 15. This incident was not recorded within 7 days on the US Postal Service 300 log.

Abatement verification is required for this violation. The abatement certification sheet is enclosed with the citation(s).

Date By Which Violation Must be Abated: 11/04/2015
Proposed Penalty: \$1100.00

A handwritten signature in black ink, appearing to read "Larry O. Davidson, Sr.", written over a horizontal line.

for
Larry O. Davidson, Sr.
Area Director

U.S. Department of Labor
Occupational Safety and Health Administration
210 Walnut Street
Room 815
Des Moines, IA 50309
Phone: 515-284-4794 Fax: 515-284-4058



INVOICE / DEBT COLLECTION NOTICE

Company Name: U.S. POSTAL SERVICE
Inspection Site: 616 W. 2nd Street, Ottumwa, IA 52501
Issuance Date: 10/21/2015

Summary of Penalties for Inspection Number	1075844
Citation 1, Serious	\$7000.00
Citation 2, Repeat	\$38500.00
Citation 3, Other-than-Serious	\$1100.00
TOTAL PROPOSED PENALTIES	\$46600.00

To avoid additional charges, please remit payment promptly to this Area Office for the total amount of the uncontested penalties summarized above. Make your check or money order payable to: "DOL-OSHA". Please indicate OSHA's Inspection Number (indicated above) on the remittance. You can also make your payment electronically on www.pay.gov. On the left side of the pay.gov homepage, you will see an option to Search Public Forms. Type "OSHA" and click Go. From the results, click on **OSHA Penalty Payment Form**. The direct link is <https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=53090334>. You will be required to enter your inspection number when making the payment. Payments can be made by credit card or Automated Clearing House (ACH) using your banking information. Payments of \$25,000 or more require a Transaction ID, and also must be paid using ACH. If you require a Transaction ID, please contact the OSHA Debt Collection Team at (202) 693-2170.

OSHA does not agree to any restrictions or conditions or endorsements put on any check, money order, or electronic payment for less than the full amount due, and will cash the check or money order as if these restrictions or conditions do not exist.

If a personal check is issued, it will be converted into an electronic fund transfer (EFT). This means that our bank will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will then usually occur within 24 hours and will be shown on your regular account statement. You will not receive your original check

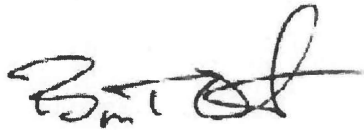
back. The bank will destroy your original check, but will keep a copy of it. If the EFT cannot be completed because of insufficient funds or closed account, the bank will attempt to make the transfer up to 2 times.

Pursuant to the Debt Collection Act of 1982 (Public Law 97-365) and regulations of the U.S. Department of Labor (29 CFR Part 20), the Occupational Safety and Health Administration is required to assess interest, delinquent charges, and administrative costs for the collection of delinquent penalty debts for violations of the Occupational Safety and Health Act.

Interest: Interest charges will be assessed at an annual rate determined by the Secretary of the Treasury on all penalty debt amounts not paid within one month (30 calendar days) of the date on which the debt amount becomes due and payable (penalty due date). The current interest rate is one percent (1%). Interest will accrue from the date on which the penalty amounts (as proposed or adjusted) become a final order of the Occupational Safety and Health Review Commission (that is, 15 working days from your receipt of the Citation and Notification of Penalty), unless you file a notice of contest. Interest charges will be waived if the full amount owed is paid within 30 calendar days of the final order.

Delinquent Charges: A debt is considered delinquent if it has not been paid within one month (30 calendar days) of the penalty due date or if a satisfactory payment arrangement has not been made. If the debt remains delinquent for more than 90 calendar days, a delinquent charge of six percent (6%) per annum will be assessed accruing from the date that the debt became delinquent.

Administrative Costs: Agencies of the Department of Labor are required to assess additional charges for the recovery of delinquent debts. These additional charges are administrative costs incurred by the Agency in its attempt to collect an unpaid debt. Administrative costs will be assessed for demand letters sent in an attempt to collect the unpaid debt.



for

Larry O. Davidson, Sr.

Area Director

10/21/15

Date