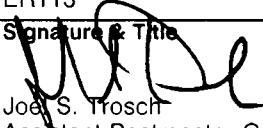




Management Instruction

Date Issued 7/2/90	Filing Number EL-430-90-8
Effective Date Immediately	Obsoletes EL-430-90-2 (3/15/90)
Originating Organization & OCC Code Employee Relations Department ER113	
Signature & Title  Joe S. Trosch Assistant Postmaster General, ERD	

Title Back Pay

I. Purpose

This Instruction, a revision of MI EL-430-90-2, provides the procedures for processing back pay claims. One section from the previous MI has been modified significantly to reflect the changes indicated in the summary below, and the entire document has been re-numbered. The basic policy for back pay appears in the *Employee and Labor Relations Manual* (ELM) 436. Certain information contained in ELM 436 is repeated here for convenience, but it is not intended to replace or alter the policy provided for in ELM 436.

II. Summary of Changes

A. Changes to Section VII

Section VII (formerly VI) is restructured to deal separately with employees who are separated or placed on indefinite suspension and individuals who are initially denied employment with the Postal Service:

- a. A 45-day transition period is established during which employees who are separated or placed on indefinite suspension are not required to seek other employment or furnish information as to their efforts to secure such employment.
- b. Individuals who are denied employment with the Postal Service and subsequently file successful appeals challenging such actions are required to mitigate damages and furnish information as to their efforts to secure other employment during the entire back pay period.

B. Changes to Attachment C

Attachment C, Notification of Employee's Obligation to Mitigate Damages, has been replaced with two new attachments, Attachment C, Notification of Employee's Obligation to Mitigate Damages (Separations and Indefinite

Suspensions), and Attachment D, Notification of Employee's Obligation to Mitigate Damages (Denial of Employment).

III. Overview

A. Scope

1. *Definition of Back Pay.* Back pay represents the restoration, authorized by an appropriate authority, of all or any part of pay and/or employment benefits for a period during which an unjustified or unwarranted personnel action terminated or reduced the basic compensation, allowances, differentials, and/or employment benefits which an employee normally would have earned.

2. *Not Included in Back Pay.* The term back pay does not include non-compensation-related claims. A non-compensation-related claim is defined as any claim which is not directly associated with basic compensation, allowances, differentials, and/or employment benefits, such as employee claims filed under Article 27 of the applicable collective-bargaining agreements and ELM 640.

B. Coverage

This Instruction covers employees and former employees of the United States Postal Service as well as individuals who have been denied employment in the Postal Service.

C. Time Limitation

A back pay claim made by an employee or his or her authorized agent or attorney must be submitted to the appropriate office within 6 years after the date such claim first accrued.

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D. Definitions

1. *Unwarranted or Unjustified Personnel Action.* Includes both personnel and pay actions (alone or in combination) as well as omission or failure to take an action or to confer a benefit. Such actions may include, but are not limited to, separation, removal, suspension, demotion, reduction in pay, failure to promote in accordance with Postal Service policy or procedures established through the collective-bargaining process, failure to reemploy a career employee who had reemployment rights, and resignation which is subsequently determined to have been coerced.

2. *Decision or Award.* An adjudication by an appropriate authority as to whether the personnel action involved in a back pay claim was, in fact, unjustified or unwarranted.

3. *Settlement Agreement.* A negotiated resolution of a back pay claim between the Postal Service and the employee and/or his or her authorized agent or attorney, without requiring an admission of wrongdoing on the part of either party. A settlement agreement can also be a negotiated resolution of a back pay claim between the Postal Service and a postal union. The terms of a settlement agreement are binding unless specifically prohibited by statute, law, or regulation.

4. *Rescission.* The unilateral cancellation of an action by the Postal Service.

5. *Direct Calculation.* The process by which back pay is determined based on the amount of compensation to which the employee would have been entitled during the back pay period had the unjustified or unwarranted personnel action not taken place.

6. *Indirect Calculation.* The process by which back pay is determined based on the terms of a settlement agreement or a decision or award in which the amount of compensation the employee is entitled to is other than that provided for under a direct calculation (see III-D-5).

7. *Pay Differential Adjustment.* The process by which back pay is determined based on the difference between what the employee actually earned in postal employment during the back pay period and what that employee would have earned had the unjustified or unwarranted personnel action not taken place. A pay differential

adjustment can involve any personnel action—other than separation, suspension, or denial of employment—which is subsequently determined by an appropriate authority to be unwarranted or unjustified.

8. *Appropriate Authority.* An entity having the authority in the case at hand to correct or direct the correction of an unjustified or unwarranted personnel action, including but not limited to (a) a court, (b) the Office of Personnel Management (OPM), (c) the Merit Systems Protection Board (MSPB), (d) the Equal Employment Opportunity Commission (EEOC), (e) an arbitrator or management representative under the grievance-arbitration procedures contained in Article 15 of the applicable collective-bargaining agreements, and (f) the Postmaster General or designee. For the purposes of adjudicating back pay claims, the Postmaster General has delegated this authority to the postmaster or installation head.

9. *Postmaster or Installation Head.* In the field, the top management official at a particular post office or installation; for Headquarters and Headquarters field units, the department head (or designee) who has functional responsibility for the employee in question. Where the employee in question is a postmaster or installation head, responsibility falls to the official to whom the postmaster or installation head reports.

IV. Responsibility

A. Employees

Employees who are separated, placed on indefinite suspension, or denied employment are responsible for mitigating damages during the period necessary to adjudicate any appeal filed (see VII).

B. Postmaster or Installation Head

The postmaster or installation head is responsible for ensuring that back pay claims are processed in a timely manner and that the employee, if required by these instructions or ELM 436, submits the necessary information and supporting documentation to process the employee's claim for back pay.

C. Management Sectional Centers

The MSC Director, Human Resources, is responsible for reviewing a back pay claim involving a separation, indefinite suspension, or denial of employment in which the direct calculation method is used to ensure that the information and supporting documentation

provided by the employee and compiled by the employing office are complete.

D. Field Division

The Field Director, Human Resources, is responsible for a final review and approval of a back pay claim involving a separation, indefinite suspension, or denial of employment in which the direct calculation method is used (see IV-E for additional levels of review and approval that may be required). This final review should ensure that all required supporting documentation has been submitted by the employee and that all processing information compiled by the employing office is complete.

E. Region

The Regional Director, Human Resources, has the authority to institute additional review and approval procedures to supplement those provided by this Instruction.

F. Headquarters and Headquarters Field Units

The General Manager, Headquarters Personnel Division, and the manager of a Headquarters field unit are responsible for processing, reviewing, and approving back pay claims filed by Headquarters and Headquarters field unit employees, respectively. Back pay claims involving a separation, indefinite suspension, or denial of employment in which the direct calculation method is used are approved by the department head (or designee) who has functional responsibility over the employee in question.

G. Minneapolis Postal Data Center

The Minneapolis Postal Data Center (PDC) is responsible for processing back pay claims and paying or collecting any monies due to or from employees. The PDC is not responsible for reviewing back pay claims for accuracy but does have the authority to request any clarification or additional information needed to process back pay claims in accordance with postal regulations.

V. Processing Forms

A. Form 8038, *Employee Statement to Recover Back Pay*

1. Form 8038 is completed by an employee who is entitled to back pay based on the direct calculation method (see III-D-5) following an unjustified or unwarranted personnel action involving a

separation, indefinite suspension, or denial of employment (see Attachment A).

2. All supporting documentation required by Form 8038 must also be provided by the employee before the back pay claim can be processed.

B. Form 8039, *Back Pay Decision/Settlement Worksheet*

1. The employing office completes Form 8039, which is the source document used by the PDC to process all back pay claims. The information provided on this form must be certified by the employing office and approved, if applicable, by the postmaster or installation head (see Attachment B).

2. When a back pay claim involves a separation, indefinite suspension, or denial of employment, the information provided on Form 8039 must be approved by the Field Director, Human Resources, (or the designated authority at the regional level if additional review and approval are required under Section IV-E). For regional, and Headquarters and Headquarters field unit employees, approval authority rests with the Regional Director, Human Resources, and the General Manager, Headquarters Personnel Division, respectively.

3. Employees must review and agree to the information provided on Form 8039 before it is submitted to the Minneapolis Postal Data Center for processing. If any points of disagreement raised by an employee cannot be resolved, the employing office should inform the employee of the final determination. If any delay occurs in processing the back pay claim, the employing office should notify the appropriate authority (see VI-C) of the reasons for the delay.

4. All supporting documentation used to complete this form, including Form 8038, must be retained at the final approval level unless the submission of such information is specifically requested on Form 8039.

VI. Procedures

A. Separations, Indefinite Suspensions, or Denial of Employment

1. *Notice of Employee Responsibility.* When employees file an administrative or judicial appeal challenging the Postal Service's action to either separate them, place them on indefinite suspension, or deny em-

ployment, the postmaster or installation head must immediately notify the employees, in writing, of their responsibility to mitigate damages (see Attachments C and D for sample letters). The postmaster or installation head must ensure that the most recent version of ELM 436.425 or 436.428 (including any subsequent changes published in a *Postal Bulletin* notice) is attached to the letter notifying employees of their obligation to mitigate damages.

2. *Completion of Forms*

- a. If an action is rescinded or if a settlement agreement or a final decision or award is made (i. e., a decision cannot be appealed or the Postal Service has decided not to appeal the case to the next level), and if back pay is determined using the direct calculation method, the postmaster or installation head coordinates the completion of Form 8039 on a preliminary basis pending receipt of the necessary information from the employee.
- b. The finance office completes the applicable sections of Form 8039 pertaining to the type and number of paid hours involved in the back pay period, and the personnel office completes the remaining sections of the form.
- c. Employees are responsible for completing Form 8038 and must be informed that the timely processing of their back pay claims will depend on the completion of Form 8038 and submission of all supporting documentation.

3. *Review and Verification.* Upon submission of Form 8038 and all supporting documentation by the employee, the postmaster or installation head reviews the information provided for completeness. When the back pay period exceeds 6 months, special attention should be given to the documentation provided to support any earnings received by the employee or to efforts to secure outside employment during the back pay period. To verify the employee's efforts to secure outside employment, the postmaster or installation head sends a letter of inquiry to all businesses that the employee claims to have contacted during the back pay period (see Attachment E for sample letter). Copies of these letters as well as all responses received become part of the back pay file (see VIII).

4. *Adjustments and Certification.* Once a determination is made that the information provided by the employee is sufficient to process the back pay claim, the postmaster or installation head makes any necessary adjustments to Form 8039 based on the documentation provided by the employee. These adjustments are made in accordance with the limitations specified in ELM 436.2. Once any adjustments are completed, the postmaster or installation head certifies the information provided on Form 8039 and forwards the back pay claim to the MSC Director, Human Resources (or Field Director, Human Resources) for review.

5. *Deficiencies.* If employees fail to provide all or any part of the information required by Form 8038, the postmaster or installation head must notify them, in writing, of the deficiencies noted and of the necessity to hold in abeyance the processing of their back pay claims pending receipt of such information.

B. **Other Personnel/Pay Actions**

1. *Completion of Form.* When an employee is entitled to back pay based on an indirect calculation, direct calculation involving a suspension for a specific number of days, a pay differential adjustment, or an erroneous separation for optional retirement (see X), the employing office must immediately complete the relevant sections of Form 8039.

2. *Certification and Approval.* The postmaster or installation head is responsible for certifying the information provided on Form 8039 and granting final approval prior to submission to the PDC for processing.

C. **Processing Delays/Compliance**

1. *Documenting Delays.* It is essential that the postmaster or installation head document any unnecessary delays caused by employees in submitting the required information to process their back pay claims.

2. *MSPB Compliance.* MSPB requires that compliance action be completed with respect to back pay within 60 days of its final decision. Generally, an initial decision is final 35 days after it is dated if a petition for review is not filed. Decisions of the full board are final on the date set forth in the decision. If there is any delay in this process caused by administrative problems or the employee's failure to provide the nec-

essary documentation, the postmaster or installation head must notify the MSPB regional office, in writing, of the reasons for the delay and provide an estimated date when the back pay check will be issued.

3. *EEOC Compliance.* EEOC requires that evidence of compliance with its decisions be submitted within 60 days of the decision. If there are any delays in this process caused by administrative problems or by the employee's failure to provide the necessary documentation, the postmaster or installation head must notify the Human Resource Service Center, Appeals Section, at the regional office and provide the reasons for the delay and an estimated date when the back pay check will be issued. Similarly, where a Headquarters or Headquarters field unit is involved, the General Manager, Employee Appeals Division, at Headquarters should be notified by the installation or department head.

4. *Arbitration or Court Compliance.* If an arbitrator or court awards back pay, the postmaster or installation head should attempt to comply with the award within a reasonable time period or within the time period set by the arbitrator or court. If there is any delay in the process caused by administrative problems or the employee's failure to provide the necessary documentation, the postmaster or installation head should contact the advocate who represented the Postal Service for advice on how to proceed.

VII. Mitigating Damages

A. General

Employees who file successful administrative or judicial appeals challenging personnel actions involving a separation, indefinite suspension, or denial of employment are required to mitigate damages during the period necessary to adjudicate their appeal. To mitigate damages, employees are expected to earn income from new employment, expanded part-time employment, and/or self-employment.

B. Eligibility for Back Pay

1. To be eligible for back pay during the periods in which other employment was not obtained, employees must have made a reasonable effort to secure such employment during those periods.
2. In determining whether an employee made a reasonable effort to secure outside employment, the employing office must

take into consideration not only the number of employer contacts that were made by the employee, but also several other factors, such as the job market and the unemployment rate in the local commuting area. If the local economy is depressed, the job opportunities will not be as readily available as in an area that is realizing substantial growth. The employment opportunities advertised in the local newspaper and the jobs available through the state job service provide good measures not only of the availability of jobs but also of the level of activity that could reasonably be expected from the employee.

C. Periods Excluded from Back Pay Calculation

1. *Separations or Indefinite Suspensions.*

If the original action resulted in separation or indefinite suspension and no outside employment was obtained for all or any part of the back pay period, employees must furnish the following:

- a. If the back pay period was 45 days or less, employees are not required to certify or to provide documentation in support of their efforts to secure other employment during this period.
- b. If the back pay period was more than 45 days and did not exceed 6 months, employees must provide a statement certifying the reasons why outside employment was not obtained for all parts of the back pay period which exceeded the first 45 days. If employees fail to provide a certified statement or indicate they did not make a reasonable effort to secure outside employment for the periods in question, such periods are excluded from the back pay computation.
- c. If the back pay period was more than 6 months, employees must provide documentation in support of their efforts to secure other employment for all parts of the back pay period which exceeded the first 45 days. If employees fail to provide such documentation for the periods in question, such periods are excluded from back pay computation.

2. *Denial of Employment.* If the original action resulted in denial of employment with the Postal Service, individuals must provide documentation in support of their efforts to secure other employment for all parts of the back pay period. If individuals fail to provide such documentation for all parts of the back pay period, such periods

are excluded from the back pay computation.

3. If such periods are excluded from a back pay computation, the employing office must document the reasons for excluding such periods from the computation. This documentation becomes part of the back pay file (see VIII).

VIII. Back Pay File

A. Establishment

For each back pay claim filed under ELM 436, a back pay file is established. It is identified and maintained by the employee's name.

B. Contents

Only the following documents (or copies) are included in the file:

- a. Decision/award or settlement agreement.
- b. Notification of the employee's obligation to mitigate damages during the back pay period (see Attachments C and D).
- c. Copies of any documented evidence submitted by the employee in support of his or her efforts to secure outside employment during the back pay period.
- d. Copies of letters sent to employer contacts made by the employee during the back pay period (see Attachment E).
- e. Form 8038, *Employee Statement To Recover Back Pay*, and any documented evidence submitted by the employee in support of the information provided on Form 8038.
- f. Copy of Form 8039, *Back Pay Decision/Settle merit Worksheet*, and any supporting documentation provided to the PDC as part of the Form 8039 submission.
- g. Copies of all correspondence between (and responses to) the Postal Service and the employee concerning the employee's back pay claim.
- h. Copies of letters sent to or received from an appropriate authority concerning the processing delays or compliance actions involving the case at hand (see VI-C).
- i. Documents on any administrative or judicial action filed by the employee concerning the Postal Service's final decision on the employee's back pay claim.

C. Retention

The back pay file is retained in the final approving official's organization for 1 year after the effective date of the decision or award or settlement agreement, unless an audit, investigation, or appeal is pending. After completion of the 1-year retention period, the file is transferred to the Federal Records Center (FRC) with an additional retention period of 5 years, 3 months from the date of transfer.

D. Privacy Act Considerations

These records are personal in nature and are to be treated as confidential and given the same measure of security as other personnel record systems (i.e., storage in locked desk or file cabinet, with access restricted to those with an official need to know). These records must be handled and disclosed only in accordance with the Privacy Act and implementing instructions (see 353 of the *Administrative Support Manual*).

IX. Deductions From Back Pay

A. General

The amount of back pay due an employee is subject to certain deductions based on the calculation method used (i.e., direct, indirect, or pay differential adjustment) and whether the decision or award or settlement agreement specifically excludes the deductions from the back pay calculation. There are three categories of deductions.

B. Categories of Deductions

1. Mandatory Deductions. These deductions are always withheld from an employee's back pay unless specifically exempted by the decision or award or settlement agreement:

- a. Direct calculation:
 - (1) Federal income tax.
 - (2) FICA or Medicare tax, whichever is applicable.
 - (3) Retirement contributions.
 - (4) Earnings from outside employment.
 - (5) Unemployment compensation, where applicable.
- b. Indirect calculation:
 - (1) Federal income tax.
 - (2) FICA or Medicare tax, whichever is applicable.
- c. Pay differential adjustment:
 - (1) Federal income tax.

(2) FICA or Medicare tax, whichever is applicable.

(3) Retirement contributions.

2. *Applicable Deductions.* These deductions are based on their applicability to the employee:

a. Direct calculation:

(1) State income tax.

(2) Local income tax.

(3) Union dues.

(4) Health insurance premiums.

(5) Life insurance premiums for any optional insurance coverage the employee is eligible to elect (see ELM 436.427).

(6) Thrift savings plan contributions.

b. Indirect calculation:

(1) State income tax.

(2) Local income tax.

c. Pay differential adjustment:

(1) State income tax.

(2) Local income tax.

(3) Life insurance premiums for any additional Option B coverage that results from increased basic pay.

(4) Thrift savings plan contributions.

3. *Optional Deductions.* These deductions can be withheld from an employee's back pay if specifically authorized by the decision or award or settlement agreement.

4. *Outstanding Employee Indebtedness to the Postal Service.* If the Postal Service has determined that an employee is indebted to it (e.g., due to a window shortage) and has afforded the employee the rights provided (nonbargaining) or 460 (bargaining unit) or Article 28 of the applicable collective-bargaining agreement, the Postal Service may deduct an appropriate amount of any remaining outstanding debt, as provided by ELM 450 or 460, from the back pay award.

X. Erroneous Separation for Optional Retirement

A. Conditions

An employee who has been separated for optional (voluntary) retirement before meeting the age and/or service requirements under Civil Service Retirement System (CSRS) or Federal Employees Retirement System (FERS) is considered erroneously separated.

B. Attainment of Retirement Eligibility

1. *More Than 30 Days.* If the time span for attaining retirement eligibility is more than 30 days, OPM disallows the employee's retirement application.

2. *30 Days or Less.* If the date has already passed on which the employee would attain the age and/or service requirements, or if the time span for attaining eligibility is 30 days or less, OPM may administratively place the employee in a leave without pay (LWOP) status from the date of the erroneous separation to the date on which the minimum service and/or age requirement is met.

C. Notification by OPM

1. The employing office receives written notification from OPM indicating the basis for the erroneous separation, the amount of annuity overpayments received by the employee, if any, the period of erroneous separation, and a request that the employee be restored to duty, if applicable.

2. OPM'S notification may indicate that the employee is entitled to back pay for the period of erroneous separation. The employing office should disregard this statement (see X-F).

D. Review by Employing Office

Upon receipt of OPM'S notification, the employing office must immediately review the employee's records and take the following actions:

- a. Service requirement: If the reason for the erroneous separation is based on service, ensure that all of the employee's service is of record and verified, including any periods of military service.
- b. Age requirement: If the reason for the erroneous separation is based on age, verify records to ascertain the correct birth date.

E. Restoration of Employee

Once the employee's retirement is established as being an erroneous separation, the employing office must immediately contact the employee by providing a copy of OPM'S letter of notification and indicating the following action to be taken:

- a. Not currently eligible for optional retirement: If at the time of notification employees do not have enough service credit to be eligible for optional retirement (including any additional service

credit they may be entitled to as a result of a back pay award, see X-G), they must be notified of the date they are to report to active duty (unless OPM elects to place the employee in an LWOP status (see X-B-2).

- b. Currently eligible for optional retirement: If at the time of notification employees have enough service credit to be eligible for optional retirement (including any additional service credit they may be entitled to as a result of a back pay award, see X-F.), they must be notified of the new effective date of their optional retirement (see X-G-1 in order to establish the correct effective date) and asked to complete a new retirement application.

F. Eligibility for Back Pay

The installation head is responsible for determining whether the erroneous separation was due to an administrative error and whether the employee is entitled to back pay. When an employee fails to provide the correct or factual information (e.g., fails to report the receipt of military retired pay and there is no indication in the employee's OPF that the employee is receiving such pay) or the personnel office questions the employee's eligibility for retirement which is subsequently denied by OPM, the employee is not entitled to back pay.

G. Back Pay Amount

1. Period of Erroneous Separation. The period of erroneous separation extends from the effective date of the employee's initial optional retirement to one of the following:

- a. The end of the month in which the employee receives a final annuity payment from OPM, if the employee is eligible for optional retirement at that time.
- b. The date upon which the employee obtains eligibility for optional retirement, if obtained prior to the effective date of the employee's return to active duty.
- c. The effective date of the employee's return to active duty.

2. Nonreceipt of Regular Annuity Payments

- a. When an employee's retirement application is disallowed by OPM prior to the receipt of regular annuity payments, back pay is based on an amount commensurate with what the employee would have received in regular annuity

payments during the period of erroneous separation.

- b. The monthly annuity estimate generated by the National Retirement Counseling System (NARECS) is used to determine the regular annuity payments the employee would have received during the period of erroneous separation.
- c. The employing office is responsible for providing the PDC with a copy of the employee's NARECS annuity estimate so it can perform the necessary back pay computations.
- d. In computing the amount of back pay, the PDC will gross up the total annuity payments the employee would have received during the period of erroneous separation, taking into account the following deductions: (1) retirement contributions and (2) FICA or Medicare deductions, whichever is applicable.
- e. The back pay amount is reduced by the following deductions: (1) Federal income taxes, (2) retirement contributions, (3) FICA or Medicare deductions, whichever is applicable, (4) state and/or local income taxes, if applicable, (5) health and/or life insurance premiums, if applicable, (6) any special annuity payments erroneously received by the employee and due OPM (see X-I), and (7) any outstanding employee indebtedness (see IX-B-4).

3. Receipt of Regular Annuity Payments

- a. An employee who was in receipt of regular annuity payments (including special annuity payments) is entitled to back pay based on an amount commensurate with what the employee actually received in adjusted annuity payments during the period of erroneous separation.
- b. In computing the amount of back pay, the PDC will gross up the net annuity payments (gross annuity payments less health and life insurance premiums deducted by OPM, if applicable) received by the employee, taking into account the following deductions: (1) Federal income taxes, (2) retirement contributions, (3) FICA or Medicare deductions, whichever is applicable, (4) state and/or local income taxes, if applicable, and (5) health and/or life insurance premiums, if applicable.
- c. The back pay amount is reduced by the following deductions: (1) the amount of adjusted gross annuity owed OPM, (2)

Federal income taxes, (3) retirement contributions, (4) FICA or Medicare deductions, whichever is applicable, (5) state and/or local income taxes, if applicable, (6) health and/or life insurance premiums, if applicable, and (7) any outstanding employee indebtedness (see IX-B-4).

Note: Even though federal and, if applicable, state and local income taxes were withheld from the employee's gross annuity prior to payment by OPM, the Postal Service is required to recover such amounts from the employee's back pay. OPM notifies the Internal Revenue Service and the appropriate state agency of the adjustments to the employee's income tax withholdings. Employing offices should inform employees to contact their local, federal, and state tax offices for information concerning the year end adjustment.

- d. The employing office is responsible for providing the PDC with a copy of OPM'S letter of notification which indicates the amount of the adjusted gross annuity due.

H. Leave Benefits

1. *Entitlement.* Employees do not earn annual and sick leave during the period of erroneous separation (see X-G-1).

2. *Sick Leave.* The amount of sick leave employees had accumulated prior to the original effective date of their optional retirement is restored to their sick leave account.

3. Annual Leave.

- a. Restored to active duty: Employees who are restored to active duty (see X-E-a) have the option of reimbursing the Postal Service for the amount of their terminal leave payment, if any, and having such leave reccredited to their account. Such leave is not reccredited until reimbursement has been completed.
- b. Eligible for optional retirement: Employees who are currently eligible for and in the process of being separated on optional retirement cannot reimburse the Postal Service for the amount of their terminal leave payment.

I. Adjusted Gross Annuity

Employees who are in receipt of special and/or regular annuity payments during a period of erroneous separation are indebted to the Civil Service Retirement and Disability Fund (the Fund) for such amounts. OPM in its letter of notification indicates the amount due from the employee (i.e., gross annuity received less health and life insurance premiums, if any). The amount of adjusted gross annuity is deducted from an employee's back pay and returned to the Fund on behalf of the employee.

U.S. Postal Service
Employee Statement To Recover Back Pay

INSTRUCTIONS: Those employees who are entitled to back pay following an unwarranted or unjustified personnel action in which the employee was

- a. separated (except erroneous separation for optional retirement),
- b. placed on indefinite suspension, or
- c. denied employment,

must complete the four pages of this form and provide all supporting documentation required before a claim for back pay can be processed. If additional sheets are attached to this form as documentation, they should be referenced at the top by the corresponding question numbers.

1—Employer Identification

Name (Last, First, MI)	Social Security Number	Designation / Activity Code
Back Pay Period: From (Month/Day/ Year)		To (Month / Day / Year)
Address of Employing Office(Street, City, State, and ZIP+4)		

II — Statement Questions

1.	<p>Did you have any earnings from new employment during the back pay period? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, you must submit a statement from your employer(s) showing the hours worked and gross earnings during the back pay period.</p> <p style="text-align: center;"><i>Attach your employment/earnings statement.</i></p>	
2a.	<p>Did you have any earnings from previous part-time employment that continued after the beginning of the back pay period? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
2b.	<p>If YES, were the hours expanded during this period? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If your hours were expanded, you must submit a statement from your employer showing the hours worked and gross earnings during the back pay period and the 6-month period prior to the beginning of the back pay period.</p> <p style="text-align: center;"><i>Attach your employment/earnings statement.</i></p>	
3.	<p>Were you self-employed during the back pay period? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, you must submit an affidavit indicating the gross amount earned and any deductions for ordinary and necessary business expenses incurred in conjunction with such self-employment. Any business expense deductions claimed must be itemized and substantiated by receipts or other documentation, if available. If such employment existed prior to the back pay period, you must also submit a statement of your earnings for the 6-month period prior to the beginning of the back pay period.</p> <p style="text-align: center;"><i>Attach your affidavit and employment/earnings statement.</i></p>	

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4.	<p>Did you seek other employment during the back pay period?</p> <p style="text-align: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, you must furnish the information required below based on the type of personnel action and the length of time involved in your back pay case.</p> <p>a. SEPARATIONS AND INDEFINITE SUSPENSIONS. If the original action resulted in separation or indefinite suspension and no outside employment was obtained for all or any part of the back pay period, you must furnish the following:</p> <p>(1) If the back pay period is 45 days or less, no further action is required.</p> <p>(2) If the back pay period is more than 45 days but does not exceed 6 months, you must provide a statement certifying the reasons why outside employment was not obtained for all parts of the back pay period, except for the first 45 days.</p> <p>(3) If the back pay period is more than 6 months, you must provide detailed information concerning the efforts you made to obtain other employment for all parts of the back pay period, except for the first 45 days. Give the following information for EACH employer you contacted:</p> <p>(a) the date or approximate date the contact was made;</p> <p>(b) the business name, address, and telephone number;</p> <p>(c) whether the contact was in person, by telephone, or by mail;</p> <p>(d) the name of the person contacted or who conducted the interview;</p> <p>(e) whether an employment application was filed; and</p> <p>(f) the reason, if known, why employment was not offered.</p> <p>b. DENIAL OF EMPLOYMENT. If the original action resulted in denial of employment with the U.S. Postal Service and no outside employment was obtained, you must provide the information required in item 4.a(3) above for ALL parts of the back pay period during which other employment was not obtained.</p> <p><i>Attach additional sheets if necessary.</i></p>																												
5.	<p>Did you receive unemployment compensation for any period(s) during the back pay period?</p> <p style="text-align: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, identify the state from which unemployment compensation was received, date(s) covered, and amount(s) received.</p> <p>Name of state from which unemployment compensation was received:</p> <p>_____</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 33%;">STARTING DATE</th> <th style="width: 33%;">ENDING DATE</th> <th style="width: 34%;">AMOUNT RECEIVED</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td style="text-align: center;">\$</td> </tr> <tr> <td> </td> <td> </td> <td style="text-align: center;">\$</td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td style="text-align: center;">\$</td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	STARTING DATE	ENDING DATE	AMOUNT RECEIVED			\$			\$						\$													
STARTING DATE	ENDING DATE	AMOUNT RECEIVED																											
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6.	<p>Did you receive workers' compensation for any period(s) during the back pay period? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, check whether you received <input type="checkbox"/> full or <input type="checkbox"/> partial compensation. Identify date(s) covered and amount(s) received.</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 33%;">STARTING DATE</th> <th style="width: 33%;">ENDING DATE</th> <th style="width: 34%;">AMOUNT RECEIVED</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td style="text-align: center;">\$</td> </tr> <tr> <td> </td> <td> </td> <td style="text-align: center;">\$</td> </tr> <tr> <td> </td> <td> </td> <td style="text-align: center;">\$</td> </tr> </tbody> </table> <p style="margin-top: 10px;"><i>Attach additional sheets if necessary.</i></p>	STARTING DATE	ENDING DATE	AMOUNT RECEIVED			\$			\$			\$
STARTING DATE	ENDING DATE	AMOUNT RECEIVED											
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7.	<p>Did you receive annuity payments for any period(s) during the back pay period? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, write in your retirement account number _____, and identify date(s) covered and amount(s) received.</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 33%;">STARTING DATE</th> <th style="width: 33%;">ENDING DATE</th> <th style="width: 34%;">AMOUNT RECEIVED</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td style="text-align: center;">\$</td> </tr> <tr> <td> </td> <td> </td> <td style="text-align: center;">\$</td> </tr> <tr> <td> </td> <td> </td> <td style="text-align: center;">\$</td> </tr> </tbody> </table> <p style="margin-top: 10px;"><i>Attach additional sheets if necessary.</i></p>	STARTING DATE	ENDING DATE	AMOUNT RECEIVED			\$			\$			\$
STARTING DATE	ENDING DATE	AMOUNT RECEIVED											
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8.	<p>During the back pay period, were you ready, willing, and able to perform your postal job? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If NO, explain why and for how long you were unable to work.</p> <p style="margin-top: 10px;"><i>Attach additional sheets if necessary.</i></p>												
9.	<p>Do you wish to substitute credited annual or sick leave, es applicable, for periods during which you were not ready, willing, and able to perform your postal job? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, identify dates(s) to be covered and type of credited leave to be substituted.</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 33%;">STARTING DATE</th> <th style="width: 33%;">ENDING DATE</th> <th style="width: 34%;">TYPE OF CREDITED LEAVE</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table> <p style="margin-top: 10px;"><i>Attach additional sheets if necessary.</i></p>	STARTING DATE	ENDING DATE	TYPE OF CREDITED LEAVE									
STARTING DATE	ENDING DATE	TYPE OF CREDITED LEAVE											

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10.	<p>With regard to health benefits coverage, do you wish to:</p> <p>a. Enroll in a new plan or option as though a new employee, OR b. Reinstate your prior enrollment, retroactive to the date it was terminated? <i>(Only one YES box may be checked; however, if no coverage is desired, both NO boxes must be checked.)</i></p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> NO <input type="checkbox"/> Yes <input type="checkbox"/> NO</p>
11.	<p>With regard to life insurance,</p> <p>If you are eligible, your life insurance coverage will be reinstated, retroactive to the date of your removal or indefinite suspension. You may also be eligible to increase your optional life insurance coverage if you meet the requirements in the <i>Employes and Labor Relations Manual(ELM)</i>, Chapter 4. You must contact your personnel office to determine your life insurance coverage eligibility.</p> <p>If you were denied employment, do you wish to:</p> <p>a. Elect life insurance coverage as a new employee, OR b. Have such coverage begin retroactive to the date employment was denied? <i>(Only one YES box may be checked; however, if no coverage is desired, both NO boxes must be checked.)</i></p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
12.	<p>With regard to the Thrift Savings Plan, do you wish to:</p> <p>a. Enroll as a new employee if an open season occurred during the back pay period, OR b. Reinstate the withholding in place at the time of your removal/suspension? <i>(Only one YES box may be checked; however, if no enrollment or withholdings are desired, both NO boxes must be checked.)</i></p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
13.	<p>Do you have any outstanding debt to the U.S. Postal Service, e.g., from a window shortage, overpayment of compensation, etc.?</p> <p>If YES, the U.S. Postal Service will deduct a portion of that debt from your back pay award in accordance with ELM, Chapter 4. If you wish to have a higher amount deducted, indicate that amount here. \$ _____</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

III — Employee Signature

Privacy Act Statement. The collection of this information is authorized by 39 USC 401 and 1003. This information will be used to determine the amount of back pay you are entitled to under a decision/award or settlement agreement authorized by an appropriate authority. As a routine use, this information may be disclosed to a congressional office at your request; to OMB for review of private relief legislation; to a labor organization as required by the NLRA; where pertinent, in a legal proceeding to which the USPS is a party; to an appropriate law enforcement agency for investigative or prosecutorial purposes; to a government agency where relevant to a hiring, contracting, or licensing decision by the requesting agency; to a government agency in order to elicit information relevant to a hiring, contracting, or licensing decision by the USPS; to an expert or consultant under contract with the USPS to fulfill an agency function; to the Federal Records Center for storage to the EEOC for investigating a formal EEO complaint filed against the USPS under 29 CFR 1 1613; to the Merit Systems Protection Board or Office of Special Counsel for proceedings involving possible prohibited personnel practices; to an independent certified public accountant during an official audit of USPS finances; to agencies having taxing authority for taxing purposes; to financial organizations receiving allotments; to OPM, SSA, VA, OWCP, insurance carriers, plans, or other program management agencies or systems for use in determining or processing a claim for health, life insurance, retirement or other program benefits under such system to OPM for its active employee/annuitant data systems used to analyze federal retirement and insurance mats; and to federal, state, or local governments administering benefit or other programs to conduct a computer match to verify eligibility, indebtedness, compliance with requirements of the program. completion of this form is voluntary. However, if this information is not provided, your back pay claim cannot be processed.

Civil Penalty for Presenting Fraudulent Claim. A person who submits a false claim is liable for a civil penalty of \$2,000, an amount equal to two times the amount of damages sustained due to the false claim, and the costs of any civil action brought to recover such amounts (See 96 Statute 978; 31 USC, 372-3731.)

Criminal Penalty for Presenting Fraudulent Claim or Making False Statements. A person who submits a false claim or makes a false statement is liable for a criminal fine of not more than \$10,000 or imprisonment for not more than 5 years or both. (See 62 statute 698, 749; 18 USC 287, 1001.)

I hereby certify that my answers to the above questions are true and correct to the best of my knowledge and belief, and I understand the above provisions regarding the Privacy Act Statement and the civil and criminal penalties for presenting fraudulent claims or making false statements.



_____ signature

_____ Date

PS Form 8038, July 1990 (Page 4 of 4)



I Back Pay Decision/Settlement Worksheet

INSTRUCTIONS: The applicable sections of this form, depending on the calculation method used (see ELM 436), must be completely filled out before the Minneapolis Postal Data Center can process this back pay claim. The employee must review and agree to the information provided on this form prior to submission to the PDC.

Do not attach or forward any additional documentation supporting this claim, unless otherwise specified. ALL supporting documentation must be retained as a part of the back pay file at the final approval level.

A. General Information (Must be Completed)

1. Employees's Name	2. Address of Employing Office
3. Social Security Number	
4. Back Pay Period (From/To; Month, Day, Year)	5. Finance Number
6. Calculation Method (Check only one) <input type="checkbox"/> Direct Calculation: Separations, indefinite suspensions and denial of employment, (Complete Sections B, C, D, E, and G)	
<input type="checkbox"/> Direct Calculation: Suspensions for a specific number of days. (Complete section E and G).	
<input type="checkbox"/> Indirect Calculation Complete sections D and F.	
<input type="checkbox"/> Pay Differential (Complete Section H. Section E should also be completed if a salary progression is applicable).	
<input type="checkbox"/> Erroneous Separation for Optional Retirement (Complete Section D, E, and G, and attach a copy of OPM's letter of Notification and a copy of the employee's NARECS monthly annuity statement if no annuity payments were received by the employee).	
7. Forum of Decision/Award or Settlement Agreement (Check only one) <input type="checkbox"/> Grievance (Steps 1 through 4) <input type="checkbox"/> MSPB <input type="checkbox"/> EEOC <input type="checkbox"/> Other: <input type="checkbox"/> Arbitration <input type="checkbox"/> OPM <input type="checkbox"/> court	

B. Was interest EXPRESSLY AWARDED in the Decision/Award or Settlement Agreement?
 If YES, the Federal Judgment Rate will be paid unless otherwise specified:
 Yes
 No

NOTE: A copy of this form must be sent to the San Mateo PDC for the processing and payment of court costs and/or attorney fees.

9a. Court Costs Were court costs awarded? <input type="checkbox"/> Yes (See below) <input type="checkbox"/> No	10a. Attorney's Fees Were attorney's fees awarded? <input type="checkbox"/> Yes (See below) <input type="checkbox"/> No
9b. Amount Awarded	10b. Amount of Fee
9c. Name and Address of Payee	10c. Name and Address of Attorney

B. Periods Disallowed

1. For Receipt of Worker's Compensation (Check one only) <input type="checkbox"/> Full Compensation <input type="checkbox"/> Partial Compensation			2. Failure to Seek Outside Employment	
			Date From	Date To
Date From	Date To	Amount Received		
		\$		
		\$		
		\$		

C. Dollar (\$) Amount(s) to be Offset

1. Receipt of Unemployment Compensation <input type="checkbox"/> Yes (See below) <input type="checkbox"/> No			2. Gross Earnings Received in Outside Employment (NOTE: Only report net earnings from self-employment) <input type="checkbox"/> Yes (See below) <input type="checkbox"/> No		
Paying State _____					
Date From	Date To	Amt. Revd.	Date From	Data To	Amt. Revd.
3. Receipt of a Terminal Leave Payment (Attach Form 2246 or other applicable documentation): <input type="checkbox"/> Yes (See below) <input type="checkbox"/> No					
Gross Terminal Leave Payment		Date Paid	Number of Annual Leave Hours		

D. Benefit Election(s)

1. Health Insurance (Check Only One)		2. Life Insurance Coverage (Check Only One)	
<input type="checkbox"/> Enroll as New Employee If checked, complete the following:	<input type="checkbox"/> Retroactive Reinstatement	<input type="checkbox"/> Enroll as New Employee If checked, complete the following:	<input type="checkbox"/> Retroactive Reinstatement
Plan Code _____	<input type="checkbox"/> Enrollment Continued (Never Terminated)	Plan Code _____	<input type="checkbox"/> Enrollment Continued (Never Terminated)
Effective Date _____	<input type="checkbox"/> No Coverage	Effective Date _____	<input type="checkbox"/> No Coverage
3. Thrift Savings Plan (Check Only One)		NOTE: Employees may not increase their life insurance coverage unless they meet the conditions specified in ELM 436.427.	
<input type="checkbox"/> Enroll as New Employee If checked, complete the following:	<input type="checkbox"/> Retroactive Reinstatement	4. Leave Benefits - Indirect Calculations Only (Check Only One)	
Contribution Rate _____ % or \$ _____ per P/P	<input type="checkbox"/> No Participation	<input type="checkbox"/> Full Leave Benefits	<input type="checkbox"/> Partial Leave
Effective Date _____	NOTE: Attach a copy of TSP election form(s) covering the back pay period.	If partial leave benefits, explain:	
5. Retirement Benefits <input type="checkbox"/> Yes (See below) <input type="checkbox"/> No		Note: Back pay based on the direct calculation method assumes employee is entitled to full leave benefits.	
Beginning and End Dates for Retirement Service Credit: _____		Calculate retirement benefits based _____ on hours per P/P	

E. Salary Progression

NOA	NOA Description	Effective Date	Des/Act Code	RSC	Lvl/Step	Salary	COLA

Attach additional sheets as necessary using this format

PS Form 8039, June 1 1989 (Page 2 of 3)



UNITED STATES POSTAL SERVICE
(POSTAL FACILITY)
(CITY/STATE/ZIP + 4)

Certified No.
Restricted Delivery
Return Receipt Requested

(Date)

(Employee)
(Address)
(City/State/Zip)

Dear (Name):

This is to advise you that throughout the period necessary for adjudication of your appeal, except for the first 45 days, you are required to make a reasonable effort to secure outside employment in order to be eligible for back pay in the event your appeal should be sustained.

Pursuant to *Employee and Labor Relations Manual* 436.425 (copy enclosed), if the back pay period exceeds 6 months and no outside employment is secured during all or any part of that period except for the first 45 days, you will be required to furnish a resume of your efforts to secure outside employment during such periods. Therefore, you should maintain documented evidence of each employer contact, including the following information:

1. The date, or approximate date, you made each contact.
2. The business name, address, and telephone number.
3. Whether the contact was in person, by phone, or by mail.
4. The name of the person whom you contacted or who conducted the interview.
5. Whether or not you filed an application for employment.
6. The reason you were not offered employment, if you know.

Failure to make a reasonable effort to secure outside employment or failure to document your efforts may result in your being denied back pay should you be the prevailing party in this appeal.

Sincerely,

(Signature)
Title

Attachment

**Attachment C, Sample Letter,
Notification of Employee's Obligation to Mitigate Damages
(Separations and Indefinite Suspensions)**



UNITED STATES POSTAL SERVICE
(POSTAL FACILITY)
(CITY/STATE/ZIP + 4)

Certified No.
Restricted Delivery
Return Receipt Requested

(Date)

(Employee)
(Address)
(City/State/Zip)

Dear (Name):

This is to advise you that throughout the period necessary for adjudication of your appeal, you are required to make a reasonable effort to secure outside employment in order to be eligible for back pay in the event your appeal should be sustained.

Pursuant to *Employee and Labor Relations Manual 436.428* (copy enclosed), you will be required to furnish a resume of your efforts to secure outside employment during the period necessary for adjudication of your appeal. Therefore, you should maintain documented evidence of each employer contact, including the following information:

1. The date, or approximate date, you made each contact.
2. The business name, address, and telephone number.
3. Whether the contact was in person, by phone, or by mail.
4. The name of the person whom you contacted or who conducted the interview.
5. Whether or not you filed an application for employment.
6. The reason you were not offered employment, if you know.

Failure to make a reasonable effort to secure outside employment or failure to document your efforts may result in your being denied back pay should you be the prevailing party in this appeal.

Sincerely,

(Signature)
Title

Attachment

**Attachment D, Sample Letter
Notification of Employee's Obligation to Mitigate Damages
(Denial of Employment)**



**UNITED STATES POSTAL SERVICE
(POSTAL FACILITY)
(CITY/STATE/ZIP +4)**

(Date)

(Company Name)
(Address)
(City/State/Zip)

Dear (Name):

I would appreciate any assistance you can provide regarding an employee of the U. S. Postal Service.

(Name of employee, address, city) claims to have contacted your business during (month/year) seeking employment. She/he has advised us the person she/he spoke to was (name of contact, if applicable).

Would you kindly check your records and let me know whether you have any documentation regarding (name of employee). It would be helpful to know the manner of contact (i.e., by phone, by mail, or in person) and whether or not she/he filed an application for employment with you.

I have enclosed a self-addressed envelope for you to use. A prompt response would be most beneficial.

Sincerely,

(Signature)
Title

Enclosure

**Attachment E, Sample Letter,
Verification Letter of Employee's Employment Efforts**