

Understanding the workers' comp. system for letter carriers' injuries

We carry the nation's mail and packages each day, often facing physical dangers along the way. Lifting bins and parcels, carrying satchels, walking through snow and ice or under a hot sun—letter carriers put their bodies on the line for our jobs. Sometimes we suffer on-the-job injuries.

Unfortunately, injury claims can take months or even years before final adjudication, and many times they are denied altogether. To assure that claims are adjudicated in a timely manner, injured carriers need to understand the rules and standards of the Office of Workers' Compensation Programs (OWCP), the agency that adjudicates and administers claims of on-the-job injury for postal and federal employees, including letter carriers. If a carrier fails to make the case connecting the injury to the work done as a letter carrier, he or she could be left paying expensive medical bills while no longer physically able to do the job.

"Think about that for a minute," NALC President Fredric Rolando said. "If you were injured on the job today, would you know what to do? You owe it to yourself and your family to make sure that the answer is yes."

Dangerous jobs

On the clock, letter carriers are at greater risk than the average worker. According to the Occupational Safety and Health Administration (OSHA), the average American on-the-job injury rate is 2.8 per 100 full-time employees annually. For Postal Service employees, it is more than double that—7.0.

Similarly, OWCP reports that the overall government lost-time case rate (indicating serious injuries) was 1.02, while the Postal Service rate was 3.95.

And though OWCP does not generally make information available that breaks down postal injury rates by craft, past reports have shown that letter carriers suffer injuries at rates far higher than other Postal Service employees.

With Postal Service annual injury rates three times that of other government workers, and more than twice the overall U.S. worker rate, it is no surprise that many letter carriers suffer at least one job-related injury during their careers.

While the OSHA and OWCP rates show that the letter carrier job is dangerous, they don't show why. That explanation is found in the nature of the job itself.

The Postal Service notes, in its Qualification Standards, that the letter carrier position requires "arduous exertion involving prolonged standing, walking, bending and reaching, and... handling heavy containers of mail weighing up to [70 pounds]."

Many letter carriers are required to drive on icy and snow-covered roads, and to walk on icy and snow-covered sidewalks, streets and porches. Some are required to spend long hours delivering in sub-zero, frostbite-causing temperatures with anemic vehicle heaters. Others are required to spend long hours delivering in 100-plus-degree heat with little or no access to shade, and with no vehicle cooling system. Many spend hours delivering in the dark. Most are subject to the inherent dangers of driving and delivering in heavy traffic. All are subject to the dangers of repetitive-motion injuries due to the requirements of casing and delivering.

The job is physically demanding and dangers abound. Add in pressures

from supervisors and managers hell-bent on squeezing unrealistic productivity numbers out of employees, and it is a wonder that there are any letter carriers who work an entire career without a job-related injury.

"Approximately one-third of all injured federal workers are letter carriers," President Rolando said. "Our duty to our brothers and sisters shouldn't end once they're injured. It should only make us work harder for them."

Protected by law

Fortunately, there is a law to protect letter carriers from the financial costs of those injuries: the Federal Employees' Compensation Act (FECA). Unfortunately, it's not an easy law to understand or navigate.

Enacted in 1916, the FECA was the first major piece of social insurance legislation in the country. It was crafted based on the belief that our society was best served if the costs of on-the-job injuries were not borne by the injured workers.

Prior to its passage, federal employees who suffered on-the-job injuries and were unable to work were simply fired. If they could not afford medical treatment, they didn't get it. If they could not afford housing or food, they relied on charity or went homeless and hungry.

The FECA is intended to be remedial. That is, the intent of the FECA is to provide remedy, or benefits, to federal employees who suffer on-the-job injuries and lose wages or incur expenses as a result.

The four intended benefits are modest:

- **Wage-loss compensation** is paid when an injury prevents an



employee from working, paid at two-thirds of their base pay (no dependents) or three-fourths of base pay (married or with one or more dependents).

- **Medical bills** are paid for treatment or care determined by OWCP to be medically necessary, at rates set by OWCP. Medical providers are prohibited from billing employees for the difference between their regular rates for a service and the amount OWCP pays them.
- **Schedule awards** are paid when an injury results in permanent impairment to a body part or organ that is listed in the FECA.
- **Transportation reimbursement** is paid when expenses are incurred for travel to and from medical appointments.

The system that injured workers are required to navigate to obtain those modest benefits is complex and technical.

It is established in the law (5 USC 81), along with its implementing regulations (20 CFR 10, 5 CFR 353, 20 CFR 501), FECA procedure manuals, bulletins and circulars, important Employee Compensation Appeals Board (ECAB) decisions, and precedential Merit Systems Protection Board decisions regarding restoration. It has its own internal appeals system, including requests for reconsideration, appeals to hearings and review, and appeals to the ECAB. The three appeal routes have different time limits, different ways of measuring the time limits and different rules regarding evidence.

While the system places the responsibility on OWCP to decide claims and administer the FECA, it places the

burden of proof on the injured worker to establish all elements of a claim, including 1) fact of injury and 2) a connection between a letter carrier's work factors and the injury.

There are highly technical rules regarding the burden of proof for these elements. For instance, to prove fact of injury, the employee must provide medical evidence establishing a concrete diagnosis. That evidence must be signed by a physician. If there is no medical report providing a diagnosis, the claim will be denied. A medical report including diagnosis but signed only by a physician's assistant or a nurse practitioner will not be recognized by OWCP as medical evidence and the claim will be denied.

The system also provides for numerous financial sanctions and forfeitures against employees for failure to comply with OWCP instructions and requirements.

In addition to the complexities inherent in the system itself, OWCP claims often intersect in important ways with other programs, including Social Security, the Federal Employees Health Benefits (FEHB) Program, the Federal Employees' Group Life Insurance (FEGLI) program, the Family and Medical Leave Act (FMLA), the Rehabilitation Act, veterans benefits, and regular and disability retirement benefits from the Office of Personnel Management (OPM). The intersections may involve financial aspects as well as continued-coverage aspects.

Many physicians throw up their hands in frustration after dealing with the OWCP bureaucracy and refuse to treat federal workers with job-related injuries.

These complexities can result in claim delays and claim denials. Even

when a claim is accepted, the complexities may cause other problems. All of this can be overwhelming.

Do I need a lawyer?

Many injured letter carriers experience this complex maze of regulations and requirements and decide they need an attorney to help them. While that might sometimes be a necessary choice for some injured workers, it might not be the best choice for NALC members.

The FECA gives claimants the right to authorize an attorney to represent them if desired, but it does not authorize OWCP to pay for the representation. The employee is solely responsible for payment to the attorney or other representative and OWCP will not reimburse the employee for those payments.

However, the FECA prohibits attorneys and representatives from collecting a fee until after the bill has been submitted to OWCP and approved by OWCP. Moreover, the implementing regulations of the FECA prohibit contingency fees of any type. The regulations provide that any representative (including an attorney) who collects a fee without proper approval from OWCP may be charged with a misdemeanor under 18 USC 292.

There is an exception to this general rule. Administrative costs—such as mailing, copying, messenger services, travel and the like—need not be approved before a representative collects them. When a representative submits a bill to OWCP, he or she must in-

clude an itemized statement showing the representative's hourly rate, the number of hours worked, and specific identification of the work performed. The representative also must submit a statement signed by the claimant of agreement or disagreement with the amount charged. When the claimant disagrees, OWCP will evaluate the dispute and decide whether or not to approve the bill.

There are relatively few attorneys who regularly practice OWCP representation, compared with the number of attorneys representing employees in state workers' compensation systems.

A typical rate of an attorney is \$300 per hour.

"It's not right that some injured workers' benefits get eaten up by attorney fees," President Rolando said. "The National Association of Letter Carriers is committed to ensuring that every member who needs help with an on-the-job injury claim receives it."

Injured NALC members are free to hire an attorney to assist with an OWCP claim, but before doing so, they might consider that the claims process under the FECA is informal. Unlike in many state workers' compensation systems, the employer is not a party to the claim, the process is intended as non-adversarial, and OWCP is supposed to act as an impartial evaluator of the evidence. FECA also provides that an officially sanctioned union official may act as a representative.

Section 7 of the National Labor Relations Act gives us, as union members, the right to engage in concerted activities for mutual aid and protection. The Supreme Court based our Weingarten rights on this language: "Mutual aid and protection."

"There also are no better words than

these to describe the work we do when we help our injured members," President Rolando said. "It lies at the core of who we are as a union."

Representation before OWCP: A benefit of NALC membership

Fortunately, many NALC branches have developed expertise and provide guidance to branch members regarding on-the-job injury claims. Some branches even devote significant resources to provide direct representation before OWCP.

Injured workers in branches that provide OWCP assistance and representation are well served, because many problems appear early in the claims process due to claimants' lack of knowledge about OWCP's technical requirements.

Many NALC branches develop this OWCP expertise and provide guidance and representation to members. The degree of expertise varies greatly among branches.

OWCP representation is unlike grievance representation, where branches are required to represent all letter carriers, even non-members. In the OWCP system, branches decide whether to provide OWCP representation, and may limit representation to members only.

"Branches that devote resources to assist members with on-the-job injury claims are to be commended," President Rolando said.

The "Injured on the Job" page at nalc.org provides basic step-by-step guidance on how to file most claims. The page has links to OWCP claim forms, OWCP laws, regulations and USPS injury compensation manuals as well as Compensation columns from *The Postal Record*.

For those injured letter carriers with problems that are beyond the expertise of branch representatives, or where local branches lack OWCP expertise, NALC provides representation to members. Each NALC national business agent's (NBA) office has trained personnel who are able and available to assist members with relatively uncomplicated OWCP issues and problems. For cases that are in posture for appeal to ECAB, the NALC will provide direct representation at the Headquarters level.

In addition, NALC has eight full-time regional workers' compensation assistants (RWCAs) who are able and available to provide direct OWCP representation in complicated cases and in cases requiring appeals of adverse OWCP decisions. RWCAs also provide advice in schedule award reviews as well as training at state and regional levels.

"Almost all of us—as activists, branch representatives or shop stewards—will be called upon at some point in our careers to walk a mile in the shoes of an injured brother or sister," President Rolando said. "NALC's goal is to make that walk a little easier, and to make the mutual aid and protection that we render to our injured members a lot more effective."

"NALC is committed to ensuring that every member who needs help with an OWCP claim receives it."

NALC members who have OWCP questions, issues or problems but are in branches that do not have OWCP expertise should go to the "Injured on the Job" page at nalc.org or contact their region's NBA. Phone numbers for each NBA's office are on page 2 of this issue or at nalc.org. **PR**