

# Heat-related warnings and rulings



**Manuel L. Peralta Jr.**

**S**ummer is just around the corner and you need to prepare for the heat to protect yourself.

Over the last 10 years, we have suffered thousands (as reported by management) of city letter carrier heat-related injuries. During this same period, we have experienced three letter carrier deaths from this cause. Two of these employees were members of NALC; their cases follow.

**John Watzlawick of Independence, MO Branch 827, lost his life on July 24, 2012.**

John had just returned to duty following a five-week absence, and delivered his route in temperatures exceeding 100 degrees while the area was under an excessive heat warning from the National Weather Service. John called his supervisor shortly after 12 p.m., reported symptoms that indicated the heat was affecting him, and was told by his supervisor to continue delivering. Just before 3 p.m., John collapsed.

The temperature was 102 degrees, with 28 percent humidity, for a calculated heat index of 104 degrees. When John arrived at the hospital, his core body temperature was measured at 108.7 degrees. The Occupational Safety and Health Administration (OSHA) conducted an investigation, issued a citation and determined that the employer had failed John by not getting him used to the heat (acclimatizing), not training supervisors and employees, and not establishing work rules and practices that encourage employees to seek assistance and evaluation when experiencing heat stress symptoms. Further, OSHA recommended that the employer establish a heat-stress management system. The citation references recommendations issued by the National Institute of Occupational Safety and Health through its publication, *Working in Hot Environments*.

The Postal Service challenged the citation before the Occupational Safety and Health Review Commission (OSHRC). I applauded the findings of the judge in my November 2014 *Postal Record* column.

**Peggy Frank of Woodland Hills, CA Branch 2902, lost her life on July 6, 2018.**

Peggy had just returned to work following a three-month absence due to an injury. OSHA conducted an investigation and issued a citation charging USPS with not furnishing a place of employment free from recognized hazards that were causing or likely to cause death or serious harm to employees. Its write-up indicates that the temperature was more

than 108 degrees, which is characterized as a “Danger” level by the National Oceanic and Atmospheric Administration. USPS contested this citation and it is awaiting a trial before the OSHRC.

**Between John’s death in 2012 and Peggy’s death in 2018,** OSHA has investigated and issued a number of citations to USPS following heat-related injuries or complaints brought to its attention about how employees were treated during excessive heat. These citations asserted that the employer did not take the steps necessary to provide a safe work environment to its employees. A number of those citations were contested and were pending before the OSHRC.

During this same time frame, USPS changed its strategy, joining forces with a law firm that had successfully fought back a heat-safety citation in the roofing industry. So, what did the employer learn from the citation issued in the death of John Watzlawick? We want USPS to train its supervisors to do all in their power to protect us from excessive heat. Further, we want them to promptly come to our aid when we inform them of the heat illness symptoms that we experience. We want supervisors to care for your well-being as if it involved their loved ones.

Instead, it appears that the lesson learned was how to protect itself from blame. What it learned was to fight off accepting any responsibility for the injuries and deaths by challenging the use of the “General Duty Clause” of the Occupational Safety and Health Act (see my column for August-September 2018).

When it came time for the first of these cases to go before the OSHRC, a decision was made to coordinate the hearings to allow for “global witnesses” to testify one time for the five cases scheduled, yet to have the relevant witnesses pertinent to each case testify at the trials held in Houston, and San Antonio, TX; Des Moines, IA; Benton, AR; and Martinsburg, WV (rural carriers).

**The judge recently issued her decision in all five cases, indicating that:**

The Secretary has not met his burden of proving the cited conditions presented a hazard of excessive heat exposure to [all 5 cities] letter carriers...He has failed to establish the economic feasibility of his proposed abatement methods related to acclimatization programs, additional paid breaks, work/recovery cycles, and earlier workday start times.

The OSHRC decision has been appealed by the Department of Labor and is pending before the board of the OSHRC. NALC is greatly disappointed with the decision, but we all must still move forward. I therefore request that you review my June 2020 column, and make sure that all letter carriers receive the required Heat Illness Prevention Program (HIPP) training, which is required every year, and put it to use.

When management tells you that “safety depends on you,” they do so because they know you cannot depend on them.

Keep an eye on each other.