

Contract Administration Unit

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Limited-duty job offers: appropriate or suitable?

Workers' compensation benefits are intended to prevent workers from suffering financial harm due to a workplace injury. The core principle is that the injured worker would be neither better nor worse off financially had the injury not occurred. Workers' compensation wage-loss and medical benefits have always been considered a temporary bridge to get the worker back to work once medical conditions have resolved.

The Office of Workers' Compensation Programs (OWCP) has regulations that enforce the requirement to return to work. If an employee cannot return to the job held at the time of injury due to partial disability from the effects of the work-related injury, but has recovered enough to perform some type of work, OWCP requires the employee to seek work.

Article 21.4 of the National Agreement requires the Postal Service to promulgate appropriate regulations to comply with the applicable regulations of OWCP. The Postal Service regulations are found in section 540 of the *Employee Labor Relations Manual (ELM)* and *Handbook EL-505, Injury Compensation*.

ELM 546.142 requires the Postal Service to make every effort toward assigning the employee to limited duty consistent with the employee's medically defined work limitations.

ELM 546.142.a states in part:

Current Employees. When an employee has partially overcome a compensable disability, the Postal Service must make every effort toward assigning the employee to limited duty consistent with the employee's medically defined work limitation tolerance (see 546.611). In assigning such limited duty, the Postal Service should minimize any adverse or disruptive impact on the employee.

The Postal Service's requirement to make every effort in finding work for injured letter carriers can result in job offers that exceed the employee's medical restrictions. The injured worker is then given the difficult choice of deciding whether the job offered comports with their medical limitations.

If the employee refuses the job offer, OWCP will decide whether or not the job offer was suitable given the employee's medical restrictions. If the job is found suitable, the injured worker can lose all OWCP benefits for refusing the job offer.

The Joint Contract Administration Manual (JCAM) Section 15.1 refers to the inability to grieve OWCP suitability determinations:

However, decisions of the Office of Workers' Compensation Programs (OWCP) are not grievable matters. OWCP has the exclusive authority to adjudicate compensation claims, and to determine the medical suitability of proposed limited duty assignments....

"Suitability" is a term of art within OWCP that specifically refers to the determination made by OWCP that the job offer complies with the work restrictions derived from the medical evidence. Although suitability determinations made by OWCP cannot be grieved, job offers made by the Postal Service can be investigated to determine whether the offer is appropriate and grieved if not in compliance with postal rules and regulations. Shop stewards should never use the word "suitability" when grieving a job offer that exceeds the injured worker's medical limitations. That does not prevent a grievance on whether or not the job offer is appropriate.

OWCP takes the Postal Service's word at face value that the described duties in the job offer fall within the accepted restrictions. Often, this is not the case. For example, where the restrictions do not allow the carrier to twist, bend or stoop, but the job offer includes casing and carrying mail with only some auxiliary parcel help. Because an OWCP claims examiner doesn't understand what casing and carrying mail entails, OWCP might find that job offer suitable. However, if the specific facts reveal that casing mail requires twisting, and carrying mail includes bending to get mail and parcels out of the delivery vehicle, loading and unloading mail from relay boxes, or placing/removing mail from mailboxes, the job offer would not be appropriate because the duties do not comply with the medical restrictions.

In such cases, a grievance would dispute the fact that the job offer is misrepresenting the actual job duties and is not appropriate because casing and carrying mail require twisting, bending and/or stooping.

The procedures outlined in Section 7-4 of the EL-505 describe how a job offer is constructed:

Offering a Limited Duty Assignment — ICCO

If medical documentation indicates the employee is capable of performing limited duty, do the following:

- Identify a limited duty assignment (see Exhibit 7.1, Limited Duty Assignment Guidelines).
- Ensure that the limited duty assignment is consistent with medically prescribed physical restrictions. Consult

(continued on next page)

Limited-duty job offers (continued)

with the OHNA, contract physician, or the treating physician if you have any doubts (see Exhibit 6.1, Sample Letter: Limited Duty Availability).

Offer a limited duty job assignment in writing and include the following information:

- A description of the duties to be performed.
- The specific physical requirements of the position and any special demands of the workload or unusual working conditions.
- The organizational and geographical location of the job.
- The date on which the job will first be available.

If the employee is at the work site and has not lost work time beyond the date of the injury, extend the offer immediately. If the employee is not currently working, initially offer the job by telephone and follow up with a written job offer.

“Injured workers who get a job offer where some of the duties may exceed their medical limitations should accept the job offer (under protest), do what work they feel is within their medical limitations, and take the job offer to their physician for review.”

Appropriateness would also include whether or not the job offer meets the Postal Service’s obligations under *ELM 546*.

Shop stewards should investigate how the job offer was constructed. Did the Postal Service consult with the occupational health nurse, contract physician or the treating physician (in writing) to ensure that the limited-duty assignment is consistent with the injured worker’s medical restrictions in accordance with Section 7-4 of *Handbook EL-505*?

The Postal Service normally makes a job offer on PS Form 2499, Offer of Modified Assignment (Limited Duty). Section 1 of the form contains employee information, Section 2 contains the hours and duties of the job, and Section 3 is where the employee can accept or refuse the job offer. Section 3 of the 2499 states:

Supervisor/manager should discuss this Offer of Modified Assignment (Limited Duty) and the duties of the assignment with the employee. If the employee has concerns (e.g.,

task, work location, or medical limitations) not addressed with this Offer of Modified Assignment (Limited Duty), the supervisor/manager should discuss the concerns with the employee and, if possible, suggest alternatives. If the employee raises additional medical issues such as a disability or seeks a reasonable accommodation, the supervisor/manager, must engage in an interactive discussion with the employee (see Handbook EL-307, Reasonable Accommodation, An Interactive Process for specific guidance). These discussions must be documented on page 2, Section IV of this form.

Reviewing a job offer is meant to be an interactive process. Injured workers need to go over the job offer with the supervisor and write their concerns in Section 4 on page 2. Injured workers should always get a copy of the job offer, whether accepted or refused. Because the job offer process is interactive, carriers should not be instructed to immediately accept the job offer or be sent home in a non-pay status. While this is a violation of postal regulations and handbooks, the injured worker should not immediately refuse the job offer.

Postal and federal regulations allow the injured worker to take the job offer to their attending physician. Injured workers who get a job offer where some of the duties may exceed their medical limitations should accept the job offer (under protest), do what work they feel is within their medical limitations, and take the job offer to their physician for review. However, accepting a job offer that may exceed an injured worker’s medical restrictions does not waive the opportunity to contest the propriety of the job offer through the grievance procedure.

If an investigation reveals that regulations were not followed and an inappropriate job offer was given to the injured worker, a grievance should be filed. Articles 3, 5, 19 and 21 incorporate the law as well as the handbooks and manuals.

Postal supervisors typically do not understand the distinction between OWCP decisions and Postal Service violations related to OWCP matters. They are often coached to argue that such violations are not grievable and not arbitrable. They may tell union representatives that OWCP is the only agency that can provide a remedy for such violations. Shop stewards should be ready for management’s arbitrability arguments and be prepared to argue that violations of the law are grievable, citing appropriate *ELM* and *EL-505* requirements. A remedy for an inappropriate job offer might include a retraction of the job offer and a letter from the Postal Service to OWCP explaining that the offered duties, in fact, fall outside the injured worker’s restrictions.