

# NATIONAL ASSOCIATION OF LETTER CARRIERS

## CONTRACT ADMINISTRATION UNIT

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### Medical Certification

#### I. Introduction

Section 513.361 of the *Employee and Labor Relations Manual* (ELM) reads:

*For periods of absence of 3 days or less, supervisors may accept the employee's statement explaining the absence. Medical documentation or other acceptable evidence of incapacity for work is required only when the employee is on restricted sick leave (see 513.36) or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service.*

Stated simply, ELM 513.361 establishes three rules:

A. For absences of more than three days, an employee must submit "medical documentation or other acceptable evidence" in support of an application for sick leave, and

B. For absences of three days or less a supervisor may accept an employee's application for sick leave without requiring verification of the employee's illness (unless the employee has been placed in restricted sick leave status, in which case verification is required for every absence related to illness regardless of the number of days involved), however

C. For absences of three days or less a supervisor may require an employee to submit documentation of the employee's illness "when the supervisor deems documentation desirable for the protection of the interests of the Postal Service."

This handbook provision, which is incorporated

into the National Agreement by reference in Article 19, has been the subject of a larger number of regional level contract arbitrations than any other contract term. Virtually all of the arbitrations have concerned situations in which a supervisor required an employee not in restricted sick leave status to submit medical documentation for an absence of three days or less. The purpose of this paper is to summarize the awards issued as a result of those arbitrations, and to summarize Step 4 settlements concerned with ELM 513.361 (Section V of this paper deals with issues concerning submission and acceptance of certification).

References in this paper to "C" cases identify arbitration awards indexed by and contained in NALC's Computer Arbitration System. References to "M" cases identify national level settlements and Step 4 decisions indexed and contained in NALC's Materials Reference System. Both "C" and "M" cases may be obtained from NALC's National Business Agents

#### II. What constitutes "three days"?

In Case M-00489, NALC and USPS agreed that "an absence is counted only when the employee was scheduled for work and failed to show." Therefore, non-scheduled days are not counted in determining length of absence unless the employee had been scheduled to come in on overtime on the non-scheduled day.

#### III. Burden of Proof

When a supervisor has required an employee to submit medical certification, the burden is upon the NALC to show that the Postal Service arbitrarily, capriciously or unreasonably required the employee to obtain medical documentation. According to the arbitrator in C-00418, the "burden is heavy." The NALC "must prove that the supervisor was arbitrary and unjustified in his request."

#### **IV. What circumstances justify requests for medical certification for an absence of three days or less, when the employee is not in restricted sick leave status?**

The hundreds of arbitration cases in which medical certification is contested may be divided into two groups: 1) Those in which the supervisor's request for certification was found justified, and 2) Those in which the supervisor's request was found not justified. Examination of these cases discloses certain patterns, as may be seen below:

##### **A. Circumstances in which a request for certification was found justified.**

In C-05348, the arbitrator ruled that certification was properly required when a heated discussion between the supervisor and the employee concerning the employee's duties was followed by a request for sick leave by the employee. "The Service's interest would be threatened if all employees who are upset, even if some justification exists for their feeling, can leave the work floor for the balance of the day and still receive compensation." The same conclusion has been drawn in other cases where an employee outwardly shows that s/he is unhappy with her or his assigned duty and then asks for sick leave. In C-03347 the arbitrator stated, "Given the appearance of the grievant's good health just prior to the undesirable assignment, there was sufficient grounds for suspicion that the sudden inability to work coinciding with the notice of an undesirable route assignment was too coincidental, thereby placing the burden on the grievant to establish his illness by medical documentation." (See also C-01597, C-04714, C-05101 and C-06565)

The request for medical documentation has usually been found proper when the employee asked for sick leave after his or her request for auxiliary assistance has been denied. In C-04627, the supervisor had denied the employee's request for assistance delivering mail and the employee then had asked for sick leave. The arbitrator concluded that the supervisor's actions were proper under the circumstances. The fact that the employee had not asked for sick leave until he was denied assistance delivering mail, coupled with his leaving work the previous day because of illness, made it reasonable for the supervisor to consider the possibility that the grievant was not truly ill. The same situation arose in C-06123 in which the arbitrator stated, "Considering the fact that the direction to the grievant to obtain medical documentation came after he had come to work and worked for two and a half hours without complaint, and had asked for auxiliary help and been denied it, and been told he would have to complete his route, even though it might entail overtime, it would

appear that it was reasonable of the supervisor to insist upon documentation." (See also C-04086, C-04782 and C-04909)

Arbitrators have concluded that medical documentation was properly requested by a supervisor when the employee called in for sick leave for a day for which the employee had previously requested annual leave. (See C-01160, C-04897, C-06747 and C-06751)

Arbitrators have not always ruled in favor of certification required of an employee who requested sick leave for a day preceding or following a day off or a holiday. Under such circumstances, however, arbitrators have been generally sympathetic to supervisors' concerns and have required only minimal further support of supervisory decisions to require certification. In C-03057 the arbitrator stated that, "Concern by the supervisor of the grievant's pattern of taking sick leave and annual leave on Saturday unless overtime was involved, as well as the fact that he had only eight hours of sick leave to his credit were legitimate reasons for requesting medical documentation." (See also C-04209, C-04117, C-04967 and C-06167.)

##### **B. Circumstances in which a request for certification was found not justified.**

While a supervisor has discretion to request medical certification, such discretion must be exercised on a case-by-case basis rather than requiring that all employees submit certification for absence on a certain day. In national level settlement M-00662, NALC and USPS agreed that local management's requirement that substantiation for illness must be submitted by any and all carriers absent on the day following a holiday was "contrary to national policy".

Where the supervisor does not have a factual basis for requiring certification and instead relies on a mere *feeling* that certification should be provided, arbitrators generally find certification to have been unreasonably required. In C-00008 the medical documentation request was ruled to have been unjustified because there was "no pattern that could raise suspicion and indicate that an employee's undocumented request should not be accepted." The Arbitrator found that three absences in a thirty-four week period were insufficient to deem the employee's sick leave request "suspicious."

Where an employee appeared sick at the time leave was requested, arbitrators usually rule that certification should not have been required. In C-01224, the request for medical documentation was not

reasonable when the employee actually appeared ill to the supervisor at the time she requested sick leave. The arbitrator pointed out that "an employee can have a lousy record of attendance but still can become ill at work which would justify excusing him from work." In C-04033 the arbitrator stated, "The single, isolated incident of the grievant leaving work due to illness on a prior occasion, with no indication otherwise in the grievant's work record that he was a malingerer likely to abuse sick leave, is not sufficient to produce a substantial doubt in the mind of a reasonable person that the grievant left his route on the day in question simply because he did not want to complete the overtime assignment." In this case the supervisor had conceded that the grievant had the outward appearance of being sick by the hoarseness in his voice.

Further, it is unreasonable for a supervisor to require medical documentation of an employee requesting sick leave without an inquiry into the employee's illness. In C-03860 the supervisor's request for medical documentation was found improper because the supervisor had not questioned the employee about his illness before asking for medical documentation. The Arbitrator stated, "To conclude that the grievant was not ill because [the supervisor] perceived no outward manifestation was not enough." (See also C-03819, C-04002 and C-05015)

Many arbitrators have ruled that the workload at the facility at the time the sick leave request is made is a factor which the supervisor should consider when deciding whether to require medical documentation of an employee. However, heavy mail volume *alone* is usually ruled to be an insufficient reason for requesting medical documentation. In C-00276 the employee had no history of sick leave abuse and had not tried to leave earlier on in the day for personal reasons. The arbitrator ruled that management's request for medical documentation based only on heavy mail volume was unreasonable. Similarly, in C-06723 the arbitrator concluded, "The mere fact that management would be inconvenienced by an employee's absence, or that other employees may have been previously required to provide medical documentation in similar situations, or that productivity and/or efficiency may be negatively impacted by an employee's unscheduled absence, are insufficient reasons--in and of themselves--to justify the requiring of an employee to provide medical documentation to verify an unscheduled absence."

Finally, although the Postal Service often argues that medical documentation is properly required where the employee calls in sick on a day preceding or following a day off, that reason *alone* is insufficient to require medical documentation. The arbitrator in C-03744 stated, "The station's need for more carriers to tideover a holiday is, in itself, not a sufficient reason for

requiring medical certification." The arbitrator concluded that the possibility that the grievant was seeking to lengthen a holiday was not demonstrated by any statement or action. (See also C-00418, C-00451, C-01641 and C-02886)

## V. What constitutes proper documentation?

Section 513.364 of the *Employee and Labor Relations Manual* reads as follows:

*When employees are required to submit medical documentation pursuant to these regulations, such documentation should be furnished by the employee's attending physician or other attending practitioner. Such documentation should provide an explanation of the employee's illness or injury sufficient to indicate to management that the employee was (or will be) unable to perform his normal duties for the period of absence. Normally, medical statements such as "under my care" or "received treatment" are not acceptable evidence of incapacitation to perform duties. Supervisors may accept proof other than medical documentation if they believe it supports approval of the sick leave application.*

Until such time as acceptable evidence substantiating an employee's illness is presented, management may refuse to approve the requested sick leave. (See M-00132) However, pursuant to national level settlement M-00001, a physician's certification of illness need not appear on a form 3971: "appropriate medical statements written on a doctor's office memoranda or stationary which are signed by the doctor are considered to be an acceptable medical certification." Indeed, provided the requirements of the ELM are satisfied, such certification may be presented on preprinted forms. (See M-00079 and M-00779)

Statements from lay persons are not acceptable as medical documentation. (See C-00102; grievant returned with a note from her husband and this was deemed unacceptable by the supervisor.) In M-00803, however, the parties agreed that less traditional medical practitioners, naturopaths, were "attending practitioner[s]," within the meaning of ELM 513.364.

In M-00703 it was agreed that management is not precluded from contacting an employee's physician in order to clarify matters pertinent to the medical certification. (See also M-00557, noting that such a

management practice is "prudent" when an employee's certification lacks "specificity")

## VI. Remedies

Once it has been concluded by the arbitrator that the supervisor has violated Part 513.361 of the Employee and Labor Relations Manual by arbitrarily, capriciously or unreasonably requiring medical documentation of an employee who requested sick leave, a remedy is due.

### A. Reimbursement for medical documentation

The remedy most frequently granted to the employee who was improperly required to obtain medical documentation is reimbursement for the cost of the medical documentation. As the arbitrator in C-01624 pointed out, "where a gross error is made by the supervisor and the effects of the error falls upon an employee who is not on Restricted Sick Leave and who has not 'taken advantage' of a very substantial sick bank, since his sick leave payments have been negligible, the Employer ought to bear the responsibility of paying the cost of a medical documentation which the grievant has been directed to procure." (See also C-00452, C-00508, C-01224, C-01624, C-01641, C-03744, C-04129, C-04195, C-04436, C-04636, C-04974, C-05015 and 6723)

An exception to the generally accepted remedy of reimbursement for the cost of the documentation is found where the employee was reimbursed by the employee's medical insurance. (See C-00417 and C-00479) In C-00417 the arbitrator reasoned, "the Arbitrator does have power and jurisdiction to fashion an appropriate remedy, which is in this type of case, reimbursement. However, it is elementary that there cannot and should not be double recovery. No employee should be able to seek payment by the Employer after having already received payment through an insurance carrier. The aim and purpose of the remedy is to make the employee whole, not to enrich the employee or penalize the employer."

### B. Reimbursement for medical treatment

Upon finding that an employee was improperly required to obtain certification, most arbitrators have ruled that the employee is entitled to be reimbursed for the cost of the medical *examination*. However, arbitrators have consistently ruled against reimbursement for medical *treatment*. In C-00008 the grievant was denied reimbursement for the cost of a tetanus shot he received. The arbitrator concluded that the grievant would have gone to a doctor to receive a

tetanus shot regardless of the medical documentation requirement. Requests for reimbursement for the cost of a prescription were denied in C-03032 ("Proof of filling the prescription was not required to meet the Employer's medical verification and therefore the Grievant elected to fulfill this prescription and take the medication at his own risk") and C-04033 ("the purchase was a personal choice and benefit which grievant may not charge to the Postal Service"). In C-03860 the grievant was compensated for the cost of a "brief office visit" yet denied reimbursement for an electrocardiogram, urinalysis, accusan, and chest x-ray. The arbitrator pointed out, "all the supervisor required was certification of incapacity to work, not a series of expensive testing procedures."

### C. Reimbursement for time spent traveling to and from the doctor's office and reimbursement for transportation costs.

In addition to being reimbursed for the cost of the medical documentation, some arbitrators have ruled that the employee is entitled to reimbursement for the time it took to travel to and from the doctor's office (see C-00067 and C-00418), and transportation costs related to the doctor's visit. (See C-02886, C-03819 and C-04744) However, reimbursement for travel expenses and time spent traveling to and from the doctor's office was denied in C-00243A and C-00451. In C 00243A the arbitrator ruled: "The testimony indicates that the doctor's office was located approximately two miles from the Grievant's home and that it was not particularly off the course of travel between the Post Office and the Grievant's home. Therefore, the Grievant is not entitled to any compensation for mileage or time spent in connection with the visit to the doctor's office." The arbitrator in C-00451 stated, "The claim for \$10, for the one hours time that the grievant spent in the doctor's office, is denied. So is the request for \$.40 mileage charge for use of the grievant's car going to and from the doctor's office. Both of these items would have been utilized by the grievant if he had gone to work instead of remaining home on December 23, 1982. His savings in not going to work recompensed him for these requested charges so he suffered no loss and required no reimbursement."