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CONTRACT ADMINISTRATION UNIT
N.A.L.C. WASHINGTON, D.C.

Mr. Vincent R. Sombrotto
President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20001-2197

Re: E94N-4E-C 98037067
Blake, L
Denver CO 80266-9995

Dear Mr. Sombrotto:

On several occasions, I met with your representative to discuss the above-referenced grievance at the fourth step of our contractual grievance procedure.

The first issue contained in this case is whether management violated the National Agreement when it telephonically contacted limited duty employees' physicians to receive information and/or clarification on a carriers medical progress. The second issue is whether management violated the National Agreement when it contacted limited duty employees' physicians to receive information and/or clarification on a carriers medical progress by letter and did not send a copy of the letter to the carrier.

During our discussion, it was mutually agreed to close this case at this level with the following understanding.

> The Office of Workers' Compensation Programs (OWCP), U.S. Department of Labor, issued new regulations governing the administration of the Federal Employees' Compensation (FECA) effective January 4, 1999. The specific regulation that is germane to the instant case is 20 CFR 10.506, which specifically prohibits phone or personal contact initiated by the employer with the physician.
>
> The EL-505 Section 6.3 specifically states that the employee will be sent copies of such correspondence.

475 L'Enfant Plaza SW
Washington DC 20260

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to close this case at this level.

Time limits were extended by mutual consent.

Sincerely,

Richard A. Murmer
Labor Relations Specialist
Grievance and Arbitration

William H. Young
Vincent R. Sombrotto
President
National Association of Letters Carriers
AFL-CIO

Date: 6/15/99

the employee's condition, and the means of transportation. Generally, 25 miles from the place of injury, the work site, or the employee's home, is considered a reasonable distance to travel. The standard form designated for Federal employees to claim travel expenses should be used to seek reimbursement under this section.

**§ 10.316 After selecting a treating physician, may an employee choose to be treated by another physician instead?**

(a) When the physician originally selected to provide treatment for a work-related injury refers the employee to a specialist for further medical care, the employee need not consult OWCP for approval. In all other instances, however, the employee must submit a written request to OWCP with his or her reasons for desiring a change of physician.

(b) OWCP will approve the request if it determines that the reasons submitted are sufficient. Requests that are often approved include those for transfer of care from a general practitioner to a physician who specializes in treating conditions like the work-related one, or the need for a new physician when an employee has moved. The employer may not authorize a change of physicians.

## Directed Medical Examinations

**§ 10.320 Can OWCP require an employee to be examined by another physician?**

OWCP sometimes needs a second opinion from a medical specialist. The employee must submit to examination by a qualified physician as often and at such times and places as OWCP considers reasonably necessary. The employee may have a qualified physician, paid by him or her, present at such examination. However, the employee is not entitled to have anyone else present at the examination unless OWCP decides that exceptional circumstances exist. For example, where a hearing-impaired employee needs an interpreter, the presence of an interpreter would be allowed. Also, OWCP may send a case file for second opinion review where actual examination is not needed, or where the employee is deceased.

**§ 10.321 What happens if the opinion of the physician selected by OWCP differs from the opinion of the physician selected by the employee?**

(a) If one medical opinion holds more probative value, OWCP will base its determination of entitlement on that medical conclusion (see § 10.502). A difference in medical opinion sufficient to be considered a conflict occurs when two reports of virtually equal weight and rationale reach opposing conclusions (*see James P. Roberts, 31 ECAB 1010 (1980)*).

(b) If a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser or consultant, OWCP shall appoint a third physician to make an examination (see § 10.502). This is called a referee examination. OWCP will select a physician who is qualified in the appropriate specialty and who has had no prior connection with the case. The employee is not entitled to have anyone present at the examination unless OWCP decides that exceptional circumstances exist. For example, where a hearing-impaired employee needs an interpreter, the presence of an interpreter would be allowed. Also, a case file may be sent for referee medical review where there is no need for an actual examination, or where the employee is deceased.

**§ 10.322 Who pays for second opinion and referee examinations?**

OWCP will pay second opinion and referee medical specialists directly. OWCP will reimburse the employee all necessary and reasonable expenses incident to such an examination, including transportation costs and actual wages lost for the time needed to submit to an examination required by OWCP.

**§ 10.323 What are the penalties for failing to report for or obstructing a second opinion or referee examination?**

If an employee refuses to submit to or in any way obstructs an examination required by OWCP, his or her right to compensation under the FECA is suspended until such refusal or obstruction stops. The action of the employee's representative is considered to be the action of the employee for purposes of this section. The employee will forfeit compensation otherwise paid or payable under the FECA for the period of the refusal or obstruction, and any compensation already paid for that period will be declared an overpayment and will be subject to recovery pursuant to 5 U.S.C. 8129.

**§ 10.324 May an employer require an employee to undergo a physical examination in connection with a work-related injury?**

The employer may have authority independent of the FECA to require the employee to undergo a medical examination to determine whether he or she meets the medical requirements of the position held or can perform the duties of that position. Nothing in the FECA or in this part affects such authority. However, no agency-required examination or related activity shall interfere with the employee's initial choice of physician or the provision of any authorized examination or treatment, including the issuance of Form CA-16.

## Medical Reports

**§ 10.330 What are the requirements for medical reports?**

In all cases reported to OWCP, a medical report from the attending physician is required. This report should include:

(a) Dates of examination and treatment;

(b) History given by the employee;

(c) Physical findings;

(d) Results of diagnostic tests;

(e) Diagnosis;

(f) Course of treatment;

(g) A description of any other conditions found but not due to the claimed injury;

(h) The treatment given or recommended for the claimed injury;

(i) The physician's opinion, with medical reasons, as to causal relationship between the diagnosed condition(s) and the factors or conditions of the employment;

(j) The extent of disability affecting the employee's ability to work due to the injury;

(k) The prognosis for recovery; and

(l) All other material findings.

**§ 10.331 How and when should the medical report be submitted?**

(a) Form CA-16 may be used for the initial medical report; Form CA-20 may be used for the initial report and for subsequent reports; and Form CA-20a may be used where continued compensation is claimed. Use of medical report forms is not required, however. The report may also be made in narrative form on the physician's letterhead stationery. The report should bear the physician's signature or signature stamp. OWCP may require an original signature on the report.

(b) The report shall be submitted directly to OWCP as soon as possible after medical examination or treatment is received, either by the employee or the physician. (See also § 10.210.) The employer may request a copy of the report from OWCP. The employer should use Form CA-17 to obtain interim reports concerning the duty status of an employee with a disabling injury.

§ 10.506 May the employer monitor the employee's medical care?

The employer may monitor the employee's medical progress and duty status by obtaining periodic medical reports. Form CA-17 is usually adequate for this purpose. To aid in returning an injured employee to suitable employment, the employer may also contact the employee's physician in writing concerning the work limitations imposed by the effects of the injury and possible job assignments. (However, the employer shall not contact the physician by telephone or through personal visit.) When such contact is made, the employer shall send a copy of any such correspondence to OWCP and the employee, as well as a copy of the physician's response when received. The employer may also contact the employee at reasonable intervals to request periodic medical reports addressing his or her ability to return to work.

**§ 10.507 How should the employer make an offer of suitable work?**

Where the attending physician or OWCP notifies the employer in writing that the employee is partially disabled (that is, the employee can perform some work but not return to the position held at date of injury), the employer should act as follows:

(a) If the employee can perform in a specific alternative position available in the agency, and the employer has advised the employee in writing of the specific duties and physical requirements, the employer shall notify the employee in writing immediately of the date of availability.

(b) If the employee can perform restricted or limited duties, the employer should determine whether such duties are available or whether an existing job can be modified. If so, the employer shall advise the employee in writing of the duties, their physical requirements and availability.

(c) The employer must make any job offer in writing. However, the employer may make a job offer verbally as long as it provides the job offer to the employee in writing within two business days of the verbal job offer.

(d) The offer must include a description of the duties of the position, the physical requirements of those duties, and the date by which the employee is either to return to work or notify the employer of his or her decision to accept or refuse the job offer. The employer must send a complete copy of any job offer to OWCP when it is sent to the employee.

**§ 10.508 May relocation expenses be paid for an employee who would need to move to accept an offer of reemployment?**

If possible, the employer should offer suitable reemployment in the location where the employee currently resides. If this is not practical, the employer may offer suitable reemployment at the employee's former duty station or other location. Where the distance between the location of the offered job and the location where the employee currently resides is at least 50 miles, OWCP may pay such relocation expenses as are considered reasonable and necessary if the employee has been terminated from the agency's employment rolls and would incur relocation expenses by accepting the offered reemployment. OWCP may also pay such relocation expenses when the new employer is other than a Federal employer. OWCP will notify the employee that relocation expenses are payable if it makes a finding that the job is suitable. To determine whether a relocation expense is reasonable and necessary, OWCP shall use as a guide the Federal travel regulations for permanent changes of duty station.

**§ 10.509 If an employee's light-duty job is eliminated due to downsizing, what is the effect on compensation?**

(a) In general, an employee will not be considered to have experienced a compensable recurrence of disability as defined in § 10.5(x) merely because his or her employer has eliminated the employee's light-duty position in a reduction-in-force or some other form of downsizing. When this occurs, OWCP will determine the employee's wage-earning capacity based on his or her actual earnings in such light-duty position if this determination is appropriate on the basis that such earnings fairly and reasonably represent the employee's wage-earning capacity and such a determination has not already been made.

(b) For the purposes of this section only, a *light-duty position* means a classified position to which the injured employee has been formally reassigned that conforms to the established physical limitations of the injured employee and for which the employer has already prepared a written position description such that the position constitutes "regular" Federal employment. In the absence of a "light-duty position" as described in this paragraph, OWCP will assume that the employee was instead engaged in non-competitive employment which does not represent the employee's wage-earning capacity, i.e., work of the type provided to injured employees who cannot otherwise be employed by the Federal Government [illegible] in any well-known branch of the general labor market.

## Return to Work—Employee's Responsibilities

**§ 10.515 What actions must the employee take with respect to returning to work?**

(a) If an employee can resume regular Federal employment, he or she must do so. No further compensation for wage loss is payable once the employee has recovered from the work-related injury to the extent that he or she can perform the duties of the position held at the time of injury, or earn equivalent wages.

(b) 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, he or she must seek work. In the alternative, the employee must accept suitable work offered to him or her. (See § 10.500 for a definition of "suitable work".) This work may be with the original employer or through job placement efforts made by or on behalf of OWCP.

(c) If the employer has advised an employee in writing that specific alternative positions exist within the agency, the employee shall provide the description and physical requirements of such alternate positions to the attending physician and ask whether and when he or she will be able to perform such duties.

(d) If the employer has advised an employee that it is willing to accommodate his or her work limitations, the employee shall so advise the attending physician and ask him or her to specify the limitations imposed by the injury. The employee is responsible for advising the employer immediately of these limitations.

(e) From time to time, OWCP may require the employee to report his or her efforts to obtain suitable employment, whether with the Federal Government, State and local Governments, or in the private sector.

**§ 10.516 How will an employee know if OWCP considers a job to be suitable?**

OWCP shall advise the employee that it has found the offered work to be suitable and afford the employee 30 days to accept the job or present any reasons to counter OWCP's finding of suitability. If the employee presents such reasons, and OWCP determines that the reasons are unacceptable, it will notify the employee of that determination and that he or she has 15 days in which to accept the offered work without penalty. At that point in

- Whether the cited period of disability is consistent with the nature of the injury. Consult with either the OHNA or the USPS contract medical provider.
- Whether information provided in Block 12 of CA-17 is consistent with Side B of Block 7.
- Note that, because of unfamiliarity with the forms, physicians sometimes indicate in Block 12 that the employee is incapable of returning to work; however, a review of the restrictions may reveal that the employee can perform limited duty tasks.
- Whether the medical findings indicate that therapy is required. If so, do the following:
  - Advise the installation head to emphasize to the employee the importance of participating in scheduled therapy treatment to facilitate the recovery process.
  - Report, in writing, missed appointments to OWCP.
- Whether a referral request for nurse intervention is appropriate (see Exhibit 6.2a, Medical Management Tools, and Exhibit 6.2b, Sample Letter: Referral Consideration for the Nurse Intervention Program).

SEE Chapter 7, Limited Duty Program Management.

### 6.3 Contacting the Treating Physician — *ICCO*

☐ When the USPS medical provider or OHNA is unable to do so, contact the treating physician if additional information is needed because of inconsistencies relative to the employee's duty status or if there are incomplete medical reports. (ELM 545.62) The designated control point may contact the treating physician if clarification is needed following the initial examination.

☐ When making such contacts, ensure the following:

- USPS personnel and the staff of USPS contract medical providers are not interfering with the medical care prescribed by the employee's attending physician.
- Inquiries are limited to information regarding the medical condition of the employee, or the employee's ability to return to full or limited duty.

☐ When communicating with the treating physician, professionally present the pertinent facts and request the treating physician's medical opinion.

☐ Contact the treating physician when requesting a new CA-17, updating medical progress. Ensure that the following are accomplished:

- Document any change in duty status authorized by the treating physician.
- When duty status information is given, issue a new CA-17 with a cover letter, requesting the treating physician to confirm the information in writing.
- Send copies of such correspondence to the employee and to the OWCP district office, and forward copies of the physician's response to both, once it is received.