

Improper job offers



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The ultimate goal of the Office of Workers' Compensation Programs (OWCP), like all other workers' compensation programs, is to return injured employees to work. OWCP regulations, in fact, require partially disabled employees who are able to work in some capacity to seek employment with the help of the employing agency and OWCP. The implementing regulations of the Federal Employees' Compensation Act (FECA), at 20 CFR § 10.500(b), provide:

Each disabled employee is obligated to perform such work as he or she can, and OWCP's goal is to return each disabled employee to suitable work as soon as he or she is medically able.

This goal represents sound social policy. The benefits of returning to work are many: The employee returns to gainful employment, making the most of his or her skills and abilities while the Postal Service also profits from these skills and abilities. As a union, we have learned over the years that most injured letter carriers who have partially recovered from their injuries are better off socially, financially and emotionally if they can return to some sort of work.

It is OWCP's policy to make every reasonable effort to return the injured worker to the employing federal agency first.¹ Beyond this policy, the Postal Service is contractually and legally obligated to make every effort to assign limited-duty work to employees who have partially recovered from an on-the-job injury. *The Employee and Labor Relations Manual (ELM)*, Section 546 outlines these obligations. NALC shop stewards routinely and successfully file limited-duty grievances to enforce this strong obligation.²

As part of the return-to-work process, OWCP regulations found at 20 CFR, Section 10.507 require the Postal Service to make the limited duty or rehabilitation assignment job offer in writing. The job 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 the job offer when it is sent to the employee.

Partially recovered employees refuse such job offers at their peril. In the case of a job offer that OWCP has determined is permanent and "suitable," under 5 USC, Section 8106(c)(2), a refusal will result in the permanent termination of all future wage-loss compensation and schedule awards. If OWCP deems the job offer temporary, under 20 CFR 500(a) a refusal will result in the suspension of wage-loss compensation for as long as the temporary assignment is available.³

Ideally, the duties included on the job offer should conform to the work restrictions to which OWCP has given weight of medical evidence. Unfortunately, this is not always the case. Injured letter carriers all too often find themselves in the predicament of receiving a job offer from the Postal Service that exceeds their accepted work restrictions. Regrettably, OWCP relies on USPS to accurately describe the work duties on the job offer and it is OWCP's practice to accept at face value USPS's assertion that the work duties fall within the accepted restrictions. Because of this, it is very hard for the injured worker to correct an inaccurate job offer through OWCP, either during an initial suitability determination or through OWCP's appellate process after a permanent sanction or temporary suspension has been imposed.

Inaccurate or improper job offers should be corrected through the grievance process.⁴

- A job offer is improper if the work duties fall outside of the injured letter carrier's medical restrictions.
- A job offer is improper if the Postal Service misrepresents the work duties to OWCP and erroneously claims that they fall within the injured letter carrier's medical restrictions.

In almost every case, because of the severe sanctions involved in a refusal, the injured letter carrier should accept the job offer. But they should also immediately file a grievance if the duties exceed the work restrictions that OWCP has accepted. Every grievance should both document the accepted work restrictions and provide detailed evidence and explanation as to how the offered duties do not conform to or exceed the restrictions. The remedy should include retraction of the job offer and a letter from the Postal Service to OWCP explaining that the offered duties, in fact, fall

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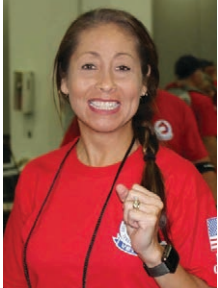
³ In both instances, the claim will remain open for medical benefits only as long as the injured still suffers residuals of their accepted conditions.

⁴ The Members Only portal of the NALC website also contains a grievance starter for improper job offers.

¹ FECA Procedure Manual 2.0814.3

² The Members Only portal of the NALC website contains both a grievance guide and grievance starter for limited-duty grievances.

Updates



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Below are additions and corrections to the 2023 Stamp Out Hunger Food Drive

numbers published in the July *Postal Record*. The national total now stands at 43,251,251 pounds, up from 42,033,910 pounds reported last issue.

Region	Branch	State	Name	Pounds Collected
4	6478	AR	Earle, AR	950
1	2525	CA	Escondido, CA	65,571
1	1439	CA	Ontario, CA	39,300
9	958	GA	Waycross, GA	3,500
2	1409	ID	Nampa, ID	16,723
3	706	IL	De Kalb, IL	16,100
3	953	IL	Princeton, IL	12,213
14	51	MA	Fall River, MA	92,260
7	864	MN	Brainerd, MN	3,650
5	1015	MO	Cape Girardeau, MO	12,000
5	390	NE	Grand Island, NE	59,086
15	693	NY	Westchester Mgd., NY	31,000
2	2558	OR	Tillamook, OR	1,917
12	2248	PA	Weatherly, PA	945
7	659	SD	Yankton, SD	3,900
8	1079	TN	Greeneville, TN	3,600
8	364	TN	Clarksville, TN	8,478
10	404	TX	Waco, TX	8,956
10	505	TX	El Paso, TX	127,170
2	2171	UT	Price, UT	11,891
14	521	VT	Burlington, VT	32,649
2	130	WA	Tacoma, WA	105,345
			Rurals	13,018
			SOH Donor Drive	424,860

Veterans: October will be here before you know it, and I will have to turn in the names of members of the NALC Veterans Group to *The Postal Record*. If you have not joined the NALC Veterans Group and you are a veteran, please do so, so you can be recognized in the November *Postal Record*.

You can sign up online at nalc.org/join-veterans or complete the sign-up card on page 9 of this issue of *The Postal Record* and mail it in. You also can go on the NALC website to download the card. Once you've done that, simply print it out, complete it and mail it in.

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outside the injured worker's accepted limitations.

Finally, an important caveat. Under Article 21.4 of the *Joint Contract Administration Manual (JCAM)* it states:

The Office of Workers' Compensation Programs has the exclusive authority to adjudicate compensation claims and to determine the medical suitability of proposed limited duty work.

This language has led to the misconception on the part of some NALC stewards that they cannot file grievances over job offers. The term "suitability" regarding limited duty in the *JCAM* is a "term of art" within OWCP. Whether or not a job offer is "suitable" is a formal determination made by OWCP that the work in the offer (as described by the employing agency) conforms with

the work restrictions to which OWCP has given weight of medical evidence.

While the union cannot file a grievance over OWCP's determination that a limited duty job offer is "suitable," the union should always file a grievance if the Postal Service's job offer is improper because it misrepresents the work duties. Stewards and advocates, when making their case, should avoid using the terms "suitable" and "suitability." Instead, the issue should be whether or not the job offer improperly misrepresented the nature of the listed duties.

It's in everyone's interest that the injured employee's return to work is a success story. Sometimes we have to file grievances to make sure that happens.