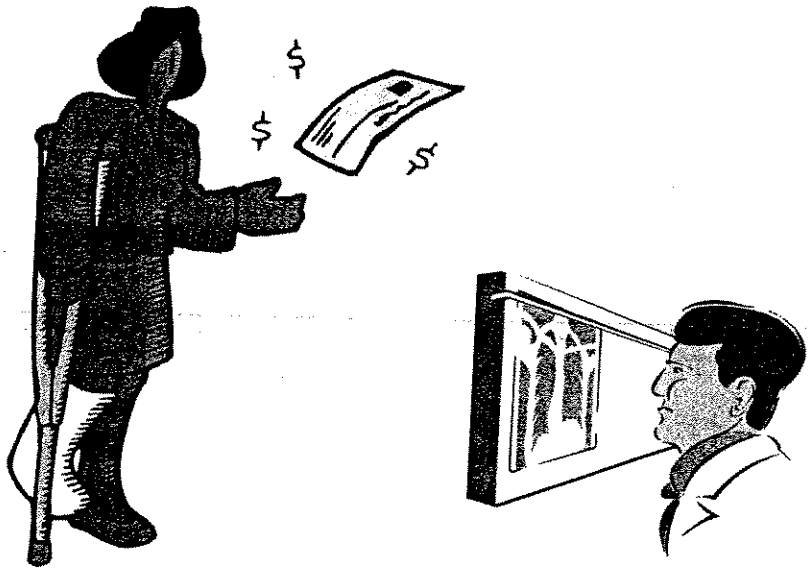
LIGHT AND LIMITED DUTY IN THE U.S.P.S.



BASIC GUIDELINES ON LIGHT & LIMITED DUTY

Published as an education tool for members and shop stewards

Greater Los Angeles Area Local
American Postal Workers Union
AFL-CIO

Omar M. Gonzalez, President / Author

Light and Limited Duty In The U.S.P.S.
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BASIC GUIDELINES ON LIGHT & LIMITED DUTY
Published by the Greater Los Angeles Area Local, APWU
Omar M. Gonzalez, President/Author

Greater Los Angeles Area Local
AMERICAN POSTAL WORKERS UNION
P.O. BOX 512645 LOS ANGELES, CA 90051 (323)750-0770
SERVING LABMC, LA CUSTOMER SERVICE, LAP&DC, LAWAMC, SANTA MONICA POST OFFICES
OMAR M. GONZALEZ
General President

BASIC GUIDELINES ON LIGHT AND LIMITED DUTY IN THE U.S.P.S

Forward.....

Postal management is forever coming up with ways to cut costs. Far too often they make these cuts at the expense of their most valuable asset-the postal worker.

Management's schemes affect every postal worker in the worst way. However, the cold hearted bosses have recently targeted ill and injured postal workers. Every time these employees get situated in a reasonable assignment managers show their ugly and indifferent side in the manner in which they treat so called light/limited duty employees.

They're hell bent on getting rid of disabled or partially disabled postal workers. I am committed to protecting the rights of the ill and injured employees. These employees have literally given up their health and well being to the U.S. Postal Service. They deserve to be respected and accommodated.

This booklet has been prepared and issued as part of the commitment to serve our members and give stewards the basic tools to render that service and educate members. The booklet is a revision and expansion of my initial guidelines first published in the 1992 issue of the L.A. Local's The Postal Herald. The guidelines have been updated and expanded.

The Guidelines are considered as Standard Operating Procedure for Local Shop Stewards on handling light and limited duty issues. Stewards are not required to secure copies of arbitration awards cited herein. However, they are expected to apply the principles. This booklet is not intended to be an exhaustive manual on all issues related to the handicapped or disabled.. It is issued as a basic tool for educational purposes.

If any material or section of this booklet is not clear or the steward is in doubt as to procedure he/she should contact the Local Union Office for clarification or direction. The booklet is also being released to the membership in the hope that through education they can help us help them.

On behalf of the members I sincerely thank the shop stewards for their efforts in representing employees in today's postal service. It is not an easy task to be a good shop steward and render quality service. Again thanks!

Fraternally yours in union solidarity,

Omar M. Gonzalez

e-mail: Aapwu@aol.com

LIGHT vs. LIMITED DUTY

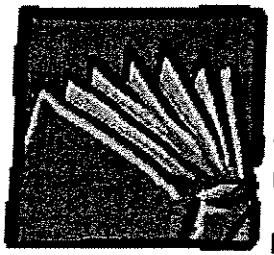
Many members and stewards believe there is a contractual difference between light duty and limited duty.

We have been conditioned to accept that light duty is only for workers injured off the job while limited duty is for employees hurt at work.

The fact is there are no contractual differences between light or limited duty. [1]

Why is this important? Because management will want us to believe that a limited duty employee has more priority than a light duty employee pitting employee against employee.

Article 13 of the contract recognizes management and union responsibility to aid and assist employees who are unable to do their regular assigned duty due to illness or injury.



The contract gives protections to employees who need light duty on a temporary and permanent basis.

However it sets some rules on who is eligible for what kind of light duty. The contract also sets rules for reassignments of ill or injured employees, for medical evidence and examinations of light duty employees and protection for employees who are not on light duty.

Light duty is voluntary. In other words an employee injured off or on the job can request light duty. An employee who becomes ill from non job related sickness in need of light duty can also request light duty.

Limited Duty in contrast is assigned by management to workers injured on duty who are partially recovered.

Lets review the USPS definitions:

- LIGHT DUTY - *results from a voluntary request by a Full time or part time employee recuperating from a serious illness or injury in which an employee is temporarily unable to perform assigned duties for reassignment to a light duty assignment.*
- PERMANENT LIGHT DUTY - *results from a voluntary request of a FT or PT employee having five (5) years of service or any employee regardless of years who was injured on the job for permanent reassignment to a light duty assignment. There are no guarantees as to the number of hours of work per day or week.* [2]
- LIMITED DUTY - *results from a management effort to assign adequate work within the employee's limitation tolerance, within the employee's craft, work facility and work hours regularly worked when an employee has partially overcome a compensable disability. If adequate duties/work are not available the employee can be assigned outside the craft, tour and facility.* [3]

Many arbitrators have ruled there are no differences between light and limited duty. But, as you can see above management does make a distinction.

However, some arbitrators claim, that employees injured at work must be paid whether they work or not. And management can assign them work wherever it is needed. But, for non work injuries there must be an assignment available in which to place the employee.

The contract, sometimes called the Collective Bargaining Agreement (CBA) and the Local Memorandum of Understanding (LMOU) are the controlling regulations on light duty assignments.

Of course other laws such as the Civil Rights Act dealing with discrimination against handicap employees and the Rehabilitation Act may also apply to "light duty" assignments.

The Office of Workers Compensation (OWCP), the Office of Personnel Management (OPM), Merit System Protection Board(MSPB), Employee & Labor Relations Manual(ELM) figure into the rules governing "limited duty" assignments.

The important thing to remember is that management does not have absolute rights to dictate the rules on light or limited duty assignments. They must comply with the contract and laws in the manner in which they treat and accommodate the ill and injured worker.

It is important for you and every member to become familiar with all the rules and regulations covering this important workplace issue. Remember this booklet is only an over view and guide.

LIGHT DUTY

Lets look at light duty and how it protects the member.

There are several contract articles that cover the assignment of ill or injured employees. Lets take a quick look at them (we will review them further in another section of this booklet).

- **Article 2** - management can not discriminate against the member because of a handicap condition or take unlawful discriminatory acts against employees as prohibited by the Rehabilitation Act. { in 1992 the Rehabilitation Act was applied to postal employees under the Americans with Disabilities Act (ADA). }

- **Article 3** - management's rights to direct, assign and retain employees in positions within the Postal Service or demote or discharge employees **are not absolute.** They are subject to the contract, the laws and to their own regulations.

- **Article 5** - management can not legally take any actions that affect wages and working conditions defined under Section 8(d) of the National Labor Relations Act that violate the contract or are inconsistent with management's obligations under the law. In other words management cannot change the rules without negotiating with the employee's union.

- **Article 7** - management must make every effort to find light duty work even if it means reducing the hours of casual employees. Casuals may not be employed in lieu of full time and part time employees.

- **Article 8** - Although management does not have to make work to keep employees on light duty assignments working a full 8 hours, they must provide them 8 hours of work if there is work available that they can perform.

Also, there is nothing prohibiting employees on light duty from working **overtime** if they are able to medically perform the duties being worked on OT.

- **Article 9** - normally the employee's salary should not be affected by assignment to light duty.

- **Article 10**– employees on light duty can take sick leave for medical appointments subject to the same rules as all other employees.
- **Article 11** - employees on light duty can be scheduled or volunteer to work holidays provided it is in accordance with the medical restrictions.
- **Article 12** - employees on light duty do not lose their seniority (unless they come from another craft). Also, light duty employees are not exempt from excessing to the needs of a section or installation since management contends that the only criteria for excessing is seniority. Even so, an argument can be made (depending on rules an LMOU has) that light duty employees are part of a supplemental workforce and therefore not subject to excessing.

- **Article 13**– this is the main contract article covering light duty. Here we will take an in-depth review of this part of the contract and how arbitrators have ruled regarding the assignment of the ill and/or injured employee.

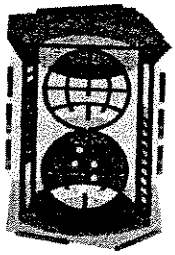
Who is eligible for light duty? Full time regulars and part time flexibles are eligible under one category and part time regulars are covered within their own category. (Section 1A and 1B).

Who is responsible for implementing the rules on light duty? The installation head but many times this responsibility is assigned to other managers which does not always result in the best handling of these issues.

Is there any other criteria for eligibility? Section 1B states …."deserving full-time and part-time flexible employees." The union interprets "deserving" as a medical criteria. Sometimes management interprets deserving as an employee who does not have performance or attendance problems. (We will revisit this issue later).

For permanent light duty the employee must have worked 5 years (unless he/she is injured at work).

It is important for employees with less than 5 years to realize that a request for permanent light duty will result in management trying to fire the employee. In this event an EEO can still be filed. (We will cover EEOs later).



EMPLOYEE OBLIGATIONS

Lets take a look at what a member must do to secure light duty.

- An employee must request light duty in writing to the Installation Head or official designee (sometimes even the supervisor) depending on what the past practice is.
- A particular form is not required in the contract. But, unless the office practice is not exclusive of a letter from the employee normally the District Form could be used. Even a doctor's letter can in effect be a request for light duty. [4]

  For temporary light duty the written request has to be supported by a medical statement from a licensed doctor or a chiropractor stating when possible the duration of the recovering period. Management may send the employee to a doctor designated by by the Installation Manager for further examination.

- The medical statement must be sufficient to substantiate the need for light duty. Be careful not to have it so restrictive that management can play games and claim there is no work for the employee to do.

- An employee requesting light duty must make management aware of the physical/ mental condition. This could be verbal or even by submission of a return to duty slip from a doctor stating limitations. Be careful when claiming stress or mental conditions. (see page 9 for more info on this)

- Employee must either clarify the medical conditions if requested to do so by management or allow management to contact the doctor (not always a good idea since the boss is not always truthful with employee doctors).

- Employee may consider not seeking higher level pay by mutual agreement in order to get light duty (this is one arbitrator's suggestion but it has to be by agreement between employee, management and union. (See page 8)

MANAGEMENT OBLIGATIONS

The burden on management to provide light duty work to employees who are eligible is a heavy one. Plenty of arbitrators have ruled that management can not just claim there is no work they must also prove they made every effort to find light duty work.

Lets review the obligations of the boss:

- Management is obligated to show greatest consideration and careful attention to each request for light duty and to the extent possible reassign the employee even if casual hours are reduced.[5] (So you see the boss can't just look at an employee and say "I ain't got no light duty.Go home.")

- Management is required to make every effort to place deserving employees on light duty. Every effort means just that. They truly are required to look for light duty work for the requesting employees . [6]

- Management must be able to show they made positive good faith efforts to assign employee light duty although management are the judges of the need for such assignment. They are even required to be imaginative in accommodating injured workers. [7]

- Management's obligation to find light duty goes beyond "an effort" even if they eventually make the determination that light duty is not available in the employee's immediate work area Management has to consider going beyond that immediate work area. [8]

- Although not obligated to "make work" management does have to find work and place employees in assignments that accommodate their restrictions. [9]

- If management acts like they believe an employee requested light duty or treats the employee like he/ she is on light duty then management has waived the requirement that light duty requests must be in writing.[10]

- If management grants light duty to an employee who requested it in writing management can not renigue or challenge the written request because of the limitations since they have already granted light duty. [11]

So, as you can see there is no excuse for letting management get away with simply denying light duty. Employees and stewards must challenge them!

Can management deny light duty? Some arbitrators have ruled that light duty is not an absolute right of employees. What right do arbitrators have to make such ruling? Under the contract (Article 15 Sec.5.A.6) when a grievance gets to the final stage, called arbitration, the decisions of an arbitrator are final and binding.

There is considerable arbitration history on light duty cases. Some ruled in favor of the employees others ruled in favor of the bosses.

Nevertheless, management does not have absolute power to deny light duty simply because they want to. There are some supposed legitimate reasons for management to deny light duty. (I left them vague purposely so as not to give them any clues as to what they can use to prove the denials). Lets take a look at them:

- When management has a reasoned judgement for rejecting the request. (Imagine management having a "reasoned judgment").
- When light duty was offered by management to the employee and he/she rejected it. This offer must be in writing.
- When assigning light duty work would be inconsistent with sound management and good business practices.
- When the employee does not have the skills to do the work available.
- When there is no light duty work anywhere.

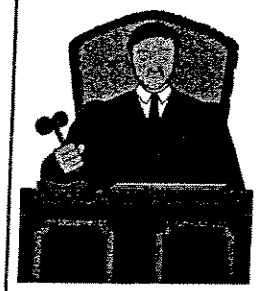
MANAGEMENT'S BURDEN OF PROOF

Normally when the Union challenges management for violations of contract issues we have the burden of proof.

But, Article 13 is one of those CBA provisions that shifts the burden of proof since management has to persuade an arbitrator that it made every effort to place an employee requesting light duty on a light duty assignment.

Lets review management's burden of proof:

- They must persuade an arbitrator of the positive steps taken to look for and provide light duty.[12]
- They must show convincing proof that they took actions to live up to their obligation of placing employees on light duty assignments.[13]
- They must have an explanation and proof that light duty assignments were not available.[14]
- They must live up to the current LMOU reservations of assignments for the ill and injured.[15]
- They must prove that the employee could not do the available work.[16]
- They must provide sufficient evidence that light duty work was not available.[17]
- They must prove that they issued a written explanation of the unavailability of light duty and their efforts to find light duty to the employee .[18]



The heaviness of management's burden of proof is illustrated by Arbitrator Christopher Miles ruling on Case No. E7C-2N-C-44880:

"....Just because the Postal Service argues that to say light duty work was unavailable does not make it so; it is also true to say that the work was not available, without more, is not sufficient to satisfy the contractual obligation of the Postal Service.

Clearly , the spirit and intent of Article 13 requires that great consideration be given by the Postal Service to make every effort to find light duty work for such employees.

In this regard , the term "every effort" evidently means something considerably beyond effort...it was incumbent upon the Postal Service , pursuant to its affirmative duty or obligation to find work for the grievant, to establish what attempts or efforts were made to find light duty work and that none was available."

So , again you see that management can not just deny a legitimate request for light duty. They have strong obligations to their employees.

Additionally there is a burden of proof on the Union when challenging management's denial of light duty.

EMPLOYEE'S UNION BURDEN OF PROOF

A union member should make contact with his/her shop steward as soon as possible regarding the light duty provisions under the contract.

Members must remember that although supervisors have an obligation to assist employees seeking light duty ***they consider it to be a burden.***

In fact managers will do just about everything to undermine an employee who needs light duty. So, the natural and true ally of an ill or injured worker is the Union.

The Shop Steward **must** keep an open mind when dealing with an ill or injured employee. All principles and policies on interviewing employees must be complied with.

This includes listening 80% of the time and asking probing questions 20 % of the time. These questions must not be invasive.

In other words a steward should not ask questions meant to demean, belittle or embarass the injured employee. (They get enough of that from management).

The questions must be presented for the purpose of assisting the employee get the light duty and/or challenge management's denial of light duty or harassment of the employee.

Standard Operating Procedure that normally is to be followed by the steward is:

1. **The employee requests representation from the supervisor. The steward is released on PS 7020 and takes the employee away from the earshot of others.**
2. **The steward prepares an Investigative Summary/Grievance Outline and proceeds to secure answers to the six success questions:**

- What is the medical condition/disability? When was it treated and what are the restrictions? Has the member been on light duty before? If so when and for what?
- When was the current request for light duty made? Was it in writing? (If so get a copy)
- Who was the request submitted to? Who denied it? Who is harassing the employee? Who granted it?
- Where does the employee normally work (bid or normal duty assignment)? Where could the employee be accommodated within the limitations? (see chapter on Accommodation)
- What are the limitations? What does the doctor's medical statement actually state?(get a copy) Is it sufficient? If not what is lacking and has it been cleared up? (see chapter on medical evidence)
- Is this situation involving temporary or permanent light duty? (Check your references for each category of light duty and ask type specific questions.)
- Does the employee have the skills to do the light duty work available? How can the employee demonstrate it? Is there light duty work available on the employee's bid and schedule? How does he/she know this?
- When did management deny the light duty request and what reasons were stated? Was the denial in writing? (If so get a copy)
- Are there other employees on light duty? If so who are they and where do they work? (Be careful not to pit worker against worker. Remember management is the enemy!)

3. Steward then secures a written statement from the employee makes sure all the questions above are addressed and when applicable has the employee complete missing elements.

4. **Analyze the information** and determine how to meet the union's burden of proof:

- Union has to prove that the employee made the condition known to management and that management knew about it.
- Union has to prove that the employee is qualified to do the available light duty work.
- Union has to prove that the employee made a request for light duty in writing.
- Union has to provide evidence that there is light duty work available within the restrictions. NOTE: types of work is not sufficient nor is the contention that others are on light duty enough—the steward must prove there is specific work available that could be done at the time light duty is requested.
- By rebuttal evidence the Union has to disprove management's claim that no light duty was available. Union has to show hour ,day, and location of assignments an employee could have performed.
- Union must prove employees do work higher level assignments on light duty and that the size of the

post office shows that light duty could possibly be found.

- In harassment situations the Union must prove that harassment/discrimination took place and that it was directly related to the status of the employee being on light duty.

What about employees who complain about light duty workers? What about them?

There is a flip side to work floor light duty issues. So called able bodied employees (contractually referred to as regular employees) have rights too.

It is also the steward's role to educate the regular employees about the role of the union in ensuring protections from discrimination and economic loss. This is not going to be easy.

Remember Maslow's theory as taught in the Local's basic shop steward training. **"Everyone has needs."** This includes the regular employee who may believe (at times by the hands of management) that light duty employees are faking or undermining his/her seniority and bid rights.

A steward must work, and I mean work, at dispelling ill feelings towards the injured worker who is already suffering physical pain and emotional distress at the hands of management.

Educate regular employees on the Union's role to protect everyone's rights and to make sure that management has a reserved light duty assignment in the event the regular able bodied employee one day may need light duty.

What are the rights of the "regular" employees? There are a few contractual rights for regular employees not on light duty:

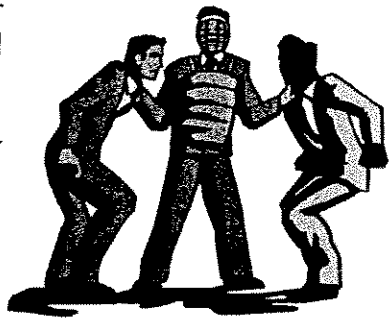
1. They have the right to be assisted if they ever need light duty.(Sec.1A & B)
2. The assignment of employees to temporary or permanent light duty is not to be made to the detriment of regular employees.

Management will use the detriment clause as an excuse to deny light duty. To do so management must show a disadvantage or adverse affect on the regular employee(s).

The Union on the other hand may be called on to represent able bodied regular employees who contend that light duty employees are detrimental to him/her.

Stewards must remember they are not representing workers against workers. The steward must focus on management's violation of the contract!

To prove management has violated the contract and disadvantaged the regular employees the union will have to show:

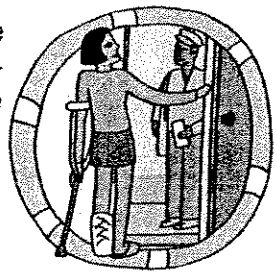


- That the FT regular was displaced due to the assignment of a light duty employee. (A steward and member must keep in mind that in the day to day application of seniority a regular bidded employee is to work their assignment as posted. However, under Article 7 and the craft articles employees can be reassigned as can a light duty worker, but only if he/she can work within the limitations on the outside assignment).
- That the FT regular was deprived of regular or overtime hours. (Note: Light duty employees are not prohibited from working OT as long as they can medically do the work, not including light duty employees from other crafts infringing on our work).
- That instead of placing the light duty workers in the section of the able body person the light duty employee could have been accommodated in his/her own section, tour and facility.
- That management acted in a capricious (whimsical) or arbitrary (impulsive) manner.
- That management gave preferred rest days to light duty employees where a vacancy existed for FT regulars , but no bids were posted.

Note: When dealing with employee vs employee issues it is best to get two steward to handle each person involved and focus against management.

What about crossing crafts? It is not an easy job for the steward to keep a balance.

Our Union fights against the reassignment of other craft light duty employees into our Union crafts. Management often does this deliberately claiming Article 13 Sec. 5 allows them to do so. They will often cite the so called "Snow Award", an arbitration misapplied by management.



The steward is caught in the conflict of survival vs. humanity. (Not an easy place to be.)

The fact that Article 13 does permit reassignment from one craft to another is seen by almost everyone as a protection against economic loss unless you are from the gaining craft and all of a sudden someone from the outside can become an infringement on your benefits and opportunities.

At Stations & Branches management has a tendency to favor carriers on limited duty over clerks on light or limited duty. The manager will often send the light duty clerk home or to another station and keep the carrier on light/limited duty doing clerical work.

This must be challenged each and every time. There is no distinction between light or limited duty and carriers can not bump clerks off any clerical assignment.

The steward will have to prove that the work being performed by the carriers is clerk work. Also the Union can assert seniority rights under Article 12, preferred duty assignment rights under Article 37 and priority rights under Article 13 since the clerks have the skills to do the work they normally are assigned .[20]

In some crafts like maintenance there are occupational craft lines that management can not just cross at any time. When they do it is a violation of Article 7, 13 and 38.[21] (see most recent award)

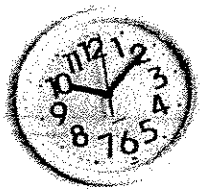
Likewise, the assignment of mail handlers into the clerk craft can violate Article 7, 13 and 37 if we can prove that management took no action to find light duty work for the mail handler in his/her own craft.

These types of cross crafts battles will go on forever it seems. But the steward must remain diligent in protecting his/her craft from encroachment. Always keep management as the focal point of our challenge.

Now lets take a look at some of the other games management plays when denying light duty or in the way they mistreat light duty workers.

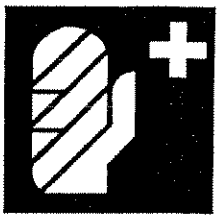
What are some of the other light duty issues? I am sure that managers are always thinking about some new ones, but lets look at a few hurdles:

- **Sending employees home early** - True management does not have to "make work" but they are obligated to find work, even if it is in another section, that the employee can medically do. The Union must prove management made no effort and that there was indeed other work to be done.
- **Changing Schedules** - To make the work life of light duty employees miserable management often will change the rest days and/or reporting time of light duty workers. Managers don't have an unrestrained right to do this.[22] Management will claim that Article 13 Sec.4.C states that the hours, location and workweek are those of needs of the service.



However, there is a Step 4 decision stating if there is light duty on the employee's tour it should be made available. [23] The Union must prove all of this and show that there are light duty assignments on the employee's regular tour of duty. Even if management claims Article 3 ,8, and 13 rights to reassign employees to another schedule these rights can not be exercised abusively or with the intent to hurt the employees or deprive them of pay. **The Union has the burden of proving motivation. (Not an easy task).**

- **Sometimes management will create what they sarcastically call "hospitals".** They will place all the ill or injured employees in this section regardless of the circumstances. This can be a violation of the ELM that mandates management to minimize adverse or disruptive impact on these employees. Remember that the Union (that's you and I) will have to prove the adverse impact and disruption.



- Management will claim that the EL 401 makes light duty assignments exempt from out of schedule premium pay. If the Union can prove there was light duty work at another facility on the employee's tour of duty we can possibly win out of schedule pay for the employee. One way to prove there are other assignments is to show that casuals are working jobs that the employee can do the work within his/her restrictions.

BIDDING RIGHTS– management will often use the bid procedure as a way of either denying light duty, changing it or reassigning employees.

Can employees on light duty bid on vacant assignments? Yes of course! A bid is a written, phoned in or computerized submission on a vacant job. There is nothing to stop a light duty employee from placing his/her bid for the vacancy.

The National Union negotiated both rights to bid and restrictions on securing bids when on light duty. A light duty employee who bids on and secures a vacancy has up to 6 months to demonstrate he/she can do the job. If he/she can not meet that time limit an additional 6 months is granted to demonstrate he/she can do the job.

The bottom line is to let management deny the bid so the Union can step in and challenge the denial. (Please secure and review the MOU on Light Duty bidding negotiated by Bill Burrus of the National Office).

Temporary vs. Permanent Light Duty - often the powers that be will launch an attack on long term light duty employees.

Article 13 is designed to assist FT and PT employees who are unable to perform regular duties and protect them from economic loss.

In today's Postal Service nothing is permanent (except maybe the indifference of managers). Management does have the right to periodic review of temporary and/or permanent light duty at least once per year or as often as management has reason to believe the employee is able to perform satisfactorily in other than the light duty assignment he/she occupies. The worker can be sent to a USPS chosen doctor.

What if employee's doctor disagrees with the company doctor? If the postal doctor's findings conflict with the employee's doctor's medical findings the contract provides for a procedure to resolve the disagreement. The Union can request that a third doctor be selected from a list of 5 Board certified specialists. By alternate striking of names the doctor is chosen.

The opinion of the 3rd doctor is final. An employee being examined by a 3rd doctor should ask the doctor if management sent over the job description he/she normally does, the job description he/she does now, the occupational physical requirements and all relevant facts about the job and employee. **Be friendly– this person has your employment future in his/her hands.**

If the doctor does not have all of the relevant information you must notify the Union immediately since the Union is paying half the bill.

If a temporary light duty employee is found fit for duty management will return you to your former assignment if it has not been filled , abolished or reverted. If it is no longer available the employee becomes unassigned. A permanent light duty employee declared fit becomes unassigned.

NO WORK AT PAY LEVEL– Management will take the language of Article 13 Section 3 that states... *"consistent with good business practices"* as giving them the excuse to deny light duty on either a higher level or lower wage level assignment.

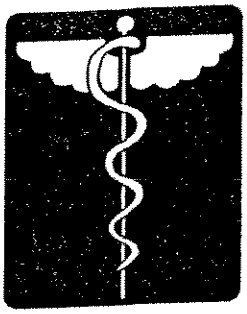
Actually, the difference in pay levels is really not that great (it could eventually make a difference however). Be that as it may remember– management does not have to "make work."

Yet there is precedent for higher level pay if management places an injured employee on higher level work. According to a Step 4 decision an employee performing higher level work must be paid at that level. [25]

If you recall on page 3 reference was made that an employee may consider not seeking higher level pay in order to get light duty work.

Arbitrator Marlatt ruled... *"there is nothing to prevent the parties from agreeing that in consideration of the light duty assignment, the Union and the Grievant will file no claim for higher level pay."* [26]

But another arbitrator ruled that the CBA does not limit light duty employees to working a position at their own pay level. He reasoned... *" there is some reference to the employee's own craft but as the arbitrator understands this word, it is clearly not limited to a job title such as Mail Processor. Beyond this , Article 13 requires a further search for available work outside the employee's own craft at the same location."*



MEDICAL EVIDENCE
AND REQUIRED DOCUMENTATION

The contract requires employees seeking light duty to submit a written request with a medical statement to substantiate the need for light duty.

According to Article 13 Sec. 2 A. a request for **temporary light duty** must be supported by a medical statement from a doctor or chiropractor.

Article 13 Sec. 2 B. a request for **permanent light duty** must be accompanied by a medical certificate from the US Public Health Service or doctor designated by the Installation head giving ***full evidence*** of the physical condition , the need for reassignment, and the ability of the employee to perform other duties. *A certificate from the employee's personal doctor will not be acceptable.*

So, for temporary light duty (this does not have to be 30 days at a time) a statement from the employee's doctor supporting the need for light duty should do.

This medical statement can not be vague. It has to provide management with sufficient information as to the employee's capabilities. It must not contain contradictory information.

This statement should identify the employee, the employee's condition and need for light duty, an approximate duration of temporary partial disability, and specific limitations. If possible it should state what the employee is capable of doing.

Examples:

+ can lift no more than 20 lbs.
+ can not perform work that requires twisting
+ can perform simple grasping only for 4 hours per day.
+ can't walk more than 4 feet at any one time.
+ no prolonged standing more than 2 hrs per tour.

The above are examples. There are many combination of restrictions and capabilities depending on the scope of the medical condition.

An employee who has his/her medical report questioned by management must not wait to file a grievance. Instead he/she should go to their doctor and clarify the statement and re-submit it to management.

When submitting a request and medical statement to management the employee should try to get some verification that it was submitted (e.g., round dated copy, certified mail return receipt, supervisor's initials etc.)

Members must be very careful not to submit medical restrictions that are so rigid they will give management an excuse to reject the light duty request or so general it allows management to play games with the restrictions:

Example: *Employee submits a medical statement that she can do no bending for 8 hours. There are very few, if any jobs, that an employee can do in the USPS without bending something (elbow, hand, leg etc.)*

Example: *Employee submits a medical report stating that he is only to work four hours. Since the doctor did not state it was for the first 4 hours management can schedule the hours at BT or ET or they can reject it because it lacks a reasonable explanation.*

- Get my Point? -

Sometimes an employee's doctor will release the employee to return to duty with restrictions based only on what the employee states. Since the doctor has no idea what postal duty is like an employee should take the time to explain what he/she does at the post office and what postal work is like.

How long after an employee submits a request should management respond? Although there are no time limits in the contract for management to respond the contract does state that management has to give "greatest consideration" to light duty requests. An unreasonable delay in acting on the light duty request violates this provision. [27]

If an employee is returning to duty and submits a medical statement requesting light duty with restrictions there is a Step 4 decision declaring that the employee should be returned to duty within 1-2 days after submission of the paper work. [28]

Some arbitrators have ruled that even a one (1) day delay in acting on light duty requests is unreasonable. [29]

Management sometimes will claim that the delay is due to the "medical officer" being unavailable or on leave. This excuse has been found to be unreasonable. [30]

When management unreasonably delays action on an employee's request for light duty the employee and Union must show that the employee was medically capable of working. If the union can show that an employee has to use sick or annual leave because of refusal or delay by management, the Union should file to get him/her back pay. But remember we must prove these things.

Another consideration is that management should not contact the employee's doctor for medical clarification delaying the light duty. Article 13 Sec. 3.C. states that when a request is refused, management is to notify the employee in writing stating the reasons for the inability to reassign the employee.

Of course, if the delay is caused by the employee's inability to accept a light duty assignment because of operational issues (e.g., skills etc.) the delay would not be unreasonable.

Permanent Light Duty medical needs are determined by management. The employee requests permanent light duty and can submit a personal medical report (but isn't required to). Management will then schedule a Fitness For Duty Exam. (more on exams later)

The risk is the company doctor will find the employee completely unfit and the employee will be told he/she must retire on disability.

To fight this the employee will then have to get a medical statement from his/her doctor refuting the company doctor's findings. This is called "medical conflict" and then the procedures for a 3rd medical opinion under Article 13 Section 2B2 can be activated. The union makes the request and the 3rd doctor's opinion is final.

Standard Operating Procedure continued.....

5. The Steward has by now interviewed the employee, secured a written statement, interviewed management and secured documentation. Before he/she presents the grievance to the immediate supervisor the contract provisions that apply must be identified and documented:

Article 2 - steward must ensure there is documentation to support the allegation of discrimination.
Names of individuals involved, medical reports, written request, qualifications of employee, preferential treatment of others and how that is determined (see page 5).

Article 3 - steward must have evidence at hand showing management violated a law, a postal regulation, and/or contract provisions.
Copies of the regulations, applicable law, and contract provisions along with fact circumstances including witness statement, grievant statement on how they were violated.

Article 5 - steward has to have evidence that management has changed past practice or changed the terms of the contract.
Evidence of past practice, including employee statements, witness statement, Step 1,2,3,4 decisions,, Labor-Management Committee Minutes etc.

Article 7 - steward must have documentation that shows improper crossing of crafts/use of casuals.
Copies of work hour reports, printouts, operation assignments, assignment order of other craft employees and casuals, casual work hour reports/ printouts, including grievant and witness statements.

Article 8 - steward must have evidence that grievant is on OTDL and OT work was within limitations/hours cut short when work was available.
Copy of OTDL, OT Assignment Log, Printout showing operations were OT was worked, copy of medical restrictions/light duty assignment. Date, location, and specific duty assignment employee could have worked.

Article 9 & 25 - steward must prove the employee performed the higher level work or that light duty work was available at the employees wage level.
PS 1223, Job Description, Operation printout showing employee clocked in, Include statement of employee and witness.

Article 11 - steward has to provide evidence that the employee could or could not work the holiday based on the medical restrictions. Holiday posting, light duty restrictions

Article 12 - steward must document if status of employee subject him/her to excessing. Abolishment/excessing notice, seniority, medical statement as to ability to perform other job, status as to supplemental workforce, assignment order, impact on others in section

Article 13/30 - steward must read and apply this article and the LMOU and provide documentation!

Article 14 - please see section under Safety Issues.

Article 16 - please see section under Termination

Article 17 & 31 - steward must show documentation that he/she requested pertinent documents that were refused. Round dated/ signed Document Request Form.

Article 34– steward must provide evidence that management placed an unfair standard of production on employee. PS-13 from supervisor, notes or written orders, witness statements, job description, copies of goals statements/postings.

No matter what the Union must prove its case!

Standard Operating Procedure continued.....

6. The steward must recognize that 90% of the time the employee's immediate supervisor will have little or no control over the assignment of light duty in his/her section.

Even so, the supervisor is not exempt from responsibility to the ill or injured employee. The steward must determine the roll the supervisor played in the instant grievance situation. A grievance must now be filed.

From the supervisor the steward can determine what manager is responsible and interviews the manager responsible. It is then that the steward determines if a grievance exists or not. The steward secures the managers initials on line 7 of the Union's grievance appeal form. If the manager refuses secure it from the immediate supervisor. If the supervisor refuses secure a copy of the PS 7020 showing the initials on the form to prove a Step 1 grievance meeting took place.

Management must give a written response to the employee if the light duty is rejected. If not done in writing it is a major violation. [31] ***The contract is clear it forces management to carefully state in words its reasons so that the Union can enforce the contract.*** [32]

Management has to respond even if it does not have any light duty assignments.

Even when management suddenly takes an employee already on light duty off light duty or sends him or her home claiming no light duty is available management must give reasons for their inability to do so.

A letter simply stating something like "based on medical information submitted no light duty is available" or "this is to inform you of no light duty being available" DOES NOT meet the requirement of notice. [33]

If grievance is resolved at Step 1 a written settlement should be secured . It benefits the steward to review any such settlement with the employee first then have him/her sign it. The steward signs last!

If the grievance is not resolved and the initials of the denying manager are secured the steward is to inform the grievant of the next step. The steward then submits the grievance for appeal using the usual protocol.

Meanwhile what does the employee who has been denied light duty do? The steward should advise the grievant of his/her options:

- Use **Article 14** and submit a PS 1767 (Report of Unsafe or Unhealthful Condition) stating that ***"management has created an unsafe working condition by failing to properly accommodate me pursuant to the Civil Rights Act, Rehabilitation Act, Americans with Disabilities Act, Article 13 of the CBA and Article 30 of the LMOU."*** Be specific as to who denied the light duty, when, where and how it was rejected. Keep a copy of the PS 1767 and submit it to the appropriate manager. Secure a round date on the copy!
  If the 1767 is not responded to by end of tour a grievance must be filed independent to the one filed for rejection of light duty. Or if the 1767 is responded to negatively a grievance must be filed.

- Use **Article 10** if necessary to take leave so as not to cause further injury. On the remarks column of the PS 3971 the employee should state... *"Management refused to accommodate my light duty request. Forced to take leave."* The employee should decide what kind of leave to request. Advise him/her that if LWOP is requested under the regulations the approval is at the discretion (whims) of the supervisor. But if LWOP is used an employee may claim unemployment. If Administrative Leave is requested the supervisor will most likely deny the request. If sick leave is requested it will most likely be approved. The employee can then grieve to have the leave restored. If annual leave is requested the supervisor may approve it. What ever leave is requested if it is denied a grievance must filed immediately independent of the grievance filed for light duty rejection.

Grievant should keep in touch with the Union on status of the grievance. An EEO can also be filed. Employee may return to work to again try to get light duty. STEWARDS MUST NOT DELAY THE GRIEVANCE!

LIMITED DUTY

As I have pointed out in the previous chapter of this book an employee who is injured on the job can also request light duty.

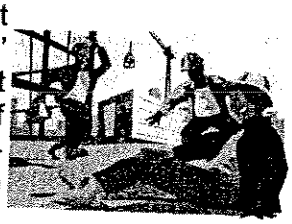
However, for employees injured on the job the Federal Employee's Compensation Act (FECA) provided not just for workers' compensation, but also restoration rights to employment and limited duty assignments.

FECA places an obligation on workers injured at work, who recover partially or who are able to perform some duties to return to work.

FECA provides that an employee who refuses to seek suitable work or refuses/neglects to work after suitable work is offered is NOT entitled to compensation.

It makes no sense to me why management would mess with employees who are willing to work. But, management does in fact molest these workers by demanding more from them then other employees.

These employees are injured! Under Article 34 of the CBA all that is expected of any employee is a fair days work for a fair days pay. But, management does not like injured workers to be on limited duty they want more production from them then they are often capable of giving.



This section of the booklet will not deal with workers' compensation per say. But it will touch on the roll of the Office of Workers Compensation (OWCP), the government office that has jurisdiction over postal workers injured while in the performance of duty.

Believe it or not, the US Postal Service has a Limited Duty Program that according to the policy is intended to speed up recuperation and motivate employees to return to regular duty.

But when all is said and done even by their own admission—the real intent is to contain costs.

There is another government agency postal management has to answer to– the Office of Personnel Management.

The OPM , headquartered in Washington D.C. has regulations that Postal management must live up to. Management has to make every effort to assign employees who are partially recovered from a compensable injury to limited duty consistent with the employee's medically defined work limitation tolerance. Management **must do this in a way that minimizes ANY adverse or disruptive impact on the worker.** [32]

There is another government agency involved in issues having to do with Limited Duty. The Merit Systems Protection Board (MSPB) is the agency that an on the job injured employee can appeal improper restoration to duty. (more on this later)

Although postal management is subjected to a degree to the OPM, OWCP, MSPB they still mistreat recovering injured employees.

Hopefully through educating our members we can put a stop to this managerial abuse. I know that if we do nothing they laugh at the suffering of the ill and injured.

Who in the USPS is charged with handling limited duty employees & assignments? Generally it is the Installation Head (District Manager/Postmaster etc.) but in reality the job usually falls on the Injury Compensation Control Office (ICCO) usually referred to as "Injury Comp Office."

According to Handbook EL 505 normally the ICCO, (aka Injury Comp. Office) is charged with handling limited duty assignments and are suppose to direct the employee's supervisor(s) to find appropriate duty for employees. Remember Injury Comp. is management!

When the injured employee's doctor of record (or OWCP) states that he/she can perform some kind of work management has to find the work commensurate with the employee's limitations.

How does management go about finding suitable work? When the employee's supervisor claim there is no "useful employment" in the employee's work location (this should be challenged). The Injury Comp Office (or who ever is officially designated) must comply with their priority assignment policy and protocol.

There are basically eight (8) steps management must follow in their search for a suitable job for the recovering employees injured on the job.

PRIORITY ASSIGNMENT STEPS

According to the EL 505 Handbook management has to find suitable work using the following pecking order:

- **1st– assign within the craft, within the tour and within the facility.**
- **2nd– assign outside the craft, within the tour and within the facility.**
- **3rd- assign within the craft, within the tour and within the facility.**
- **4th- assign outside the craft, outside the tour and within the facility.**
- **5th– assign within the craft, within the tour and outside the facility.**
- **6th– assign outside the craft, within the tour, and outside the facility.**
- **7th– assign within the craft, outside the tour, and outside the facility.**
- **8th - assign outside the craft, outside the tour, and outside the facility.**

When management reassigns employees they are required to minimize adverse or disruptive impact and consider matching the limited duty assignment as close as possible to the employee's regular job schedule.

But recent actions of management have disrupted many work lives of injured employees. Management claims USPS spends more than $600 million on injury related costs.

The cold hearted managers have boldly issued written orders to take steps to either reassign injured workers or to get them off the rolls. Postal regulations make it easy for employees on long term workers' compensation to be terminated.

All local management has to do is get the Area bosses to approve separation-disability. Not hard to do since the Regional office is dictating how and when to fired injured workers.

To fight this managerial abuse we must understand what they are obligated to do and challenge them every time they fail at that obligation.

Again this booklet is a basic tool not a legal guide to Title VII CRA, ADA, Rehab Act.

Manager are instructed to ensure limited duty assignments result in "tangible production" but not a "make work" job.

Management is mandated to make all reasonable efforts to assign employees within the employee's craft and to keep the hours of the limited duty assignment as close as possible to the employee's regular schedule.

So why are they harassing injured employee? Simply put– to get rid of them! Unfortunately some injured employees will become so emotionally upset and disgusted with the Post Office they will just quit.

But, employees must also help their own cause. If an employee demands a different schedule , different work location and/or better rest days those demands must be reasonably related to and consistent with their medical restrictions.

Otherwise, management can y schedule the employee for a Fitness For Duty Exam with the intent to deny the limited duty assignment or try to force him/her out of the service.

Yet, if the employee's medical restrictions do not allow him/her current bidded duty assignment, the tasks that he/she performs could be developed in such a way as to provide a modified assignment consistent with medical restrictions.

When a job is modified is modified it must be has been identified by management, a clear, readily understandable and concise job description must be developed by management.

The job description must contain the following: [33]

- Name of the employee, job title and status (e.g., FT clerk, FT custodian, FT TTO Operator).
- The work schedule , tour and location.
- All specific tasks involved in the assignment. Terms like "other duties as assigned" should not be on the job description unless examples are included.
- Physical requirements of the proposed tasks. It is not acceptable for management to state something like " all assigned duties within medical restrictions."
- Any special workload demands or unusual working conditions.

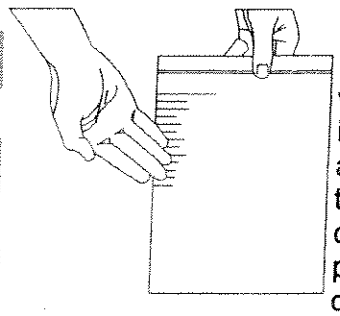
The job description must then be sent to and reviewed by an OWCP identified medical authority (i.e., doctor).

The medical authority must be notified in writing and render an opinion if the job description is in compliance or non compliance with the employee's restriction BEFORE it is offered to the employee.

If the doctor or OWCP determine the job description should be modified management must do so or submit another job description.

If the doctor or OWCP determine the job description is in compliance with the medical restrictions management then prepares a JOB OFFER that must include the following:

- The job title, work schedule and tour.
- The job location, grade and salary.
- The effective date of job availability
- A description of the appropriate appeal rights.
- The date the employment must respond to the job offer.
- Possible consequences of refusing the job offer.
- A space for the employee to accept/refuse.



Management must then conduct a pre-reassignment interview with the employee. During the interview management must explain the specific duties being offered, as well as, the physical requirements demanded of the position. The job offer must be in writing. Management must also explain seniority, leave credit, salary rates and bid rights to the employee.

If the employee accepts the manager issues a letter to the employee informing him/her where, when and to whom to report.

If the employee refuses he/she must realize that management will notify OWCP of the refusal in order to get OWCP to issue a notice that the job is suitable. If OWCP declares the job to be suitable they will issue a notice to the employee advising the employee that refusal to accept will result in the forfeiture of monetary benefits.

Of course, the employee must be given time to respond to OWCP and provide a reasonable explanation justifying the refusal. **Note: At anytime during this process the employee can accept the job offer.**

Management must keep the job offer available during the OWCP Appeals Process. If they give it to someone else or make it unavailable OWCP will deem the job offer as invalid.

If management tries to terminate the employee before the OWCP due process is completed the job offer will be considered invalid.

An employee who rejects a job offer must write to OWCP and explain the reasons he/ he believes justifies the refusal.

The employee must consider the fact that his/ her own doctor has found the job to be suitable. If there are facts involved in the job offer that the doctor did not know the employee should have the issue clarified. This will create medical evidence that can justify the refusal.

What should the steward recommend at this point? If the rejection is based on discriminatory acts or violations of the rules and regulations , and not health reasons, the steward may suggest for the employee to accept the job offer and state after the employee's signature... ***"Under protest".***

The employee may then file a grievance, EEO, MSPB or OWCP appeal as appropriate.

Normally the job offer is good for about one (1) year after which management will most likely schedule the employee for a fitness for duty examination. If a fitness for duty exam shows no change in the medical condition the employee is to be advised in writing.

If the exam shows further restrictions are necessary the job offer is revised and the employee is notified of the action to revise or develop a new job offer. Meanwhile, the current job offer can be adjusted .

If the exam shows improvement the employee is advised that a new job description is being developed and a new job offer will be made.

Restoration Rights

The Federal Employees Compensation Act (FECA) guarantees employees certain rights upon recovery from an on the job injury.

OWCP and OPM, ***not*** USPS , is assigned responsibility under the law. OPM administers restorations rights and OWCP administers workers compensation.

Eligibility for reasonable accommodation is covered in the following page. Eligibility for restoration is based on eligibility to receive workers compensation (OWCP) benefits.

Restoration rights of employees who sustained compensable injuries come under four categories:

- **Fully recovered within one year**– employee has mandatory restoration rights to the positions he/she left or equivalent. If such a positionit does not exist restoration is agency wide. Employee must apply immediately and be restored immediately unconditionally.
- **Fully recovered after one year**– employee is entitled to priority consideration for the former position or its equivalent if he/she applies for restoration within 30 days of the date compensation stopped. Priority consideration places the employee on a reemployment priority list.
- **Physically disqualified** - (don't let the term fool you.) *this is an employee who is medically unable to return to his/her former occupation, but is able to do other work.* He/she is **entitled** , within 1 year of when compensation begins, to be placed in a position that most closely approximates the seniority, status and pay for which otherwise entitled to. This right is agency wide. (After one year, the employee is entitled to same rights as partially recovered employee).

[Note: physically disqualified employees typically have permanent medical conditions, which is disqualifying and most likely will not allow the workers to return to their former positions]

- **Partially recovered** - employee has not yet fully recovered, but is able to work in some capacity. He/she is entitled to be considered for employment. USPS must make every effort to place him/ her but there is no absolute right to restoration. If placed in lower level assignment OWCP is to make up the difference in pay or management can decide to pay at the former rate. If he/she later fully recovers then the employee restoration rights of fully recovered employee is granted.

This employee must seek employment within his/her capability. If a suitable job offer is refused by the employee OWCP may terminate compensation.

Remember OWCP determines if a job offer is suitable under the employee's medical restrictions NOT Postal management.

Also, management can not refuse to restore an employee for alleged poor performance prior to the injury.

According to postal regulations reassignment of limited duty employees must be in compliance with the collective bargaining agreement (CBA). Employees receive all rights and protections appropriate under the contract.

Management's own regulations (ELM) and the contract rules for filling job vacancies and promotions , as well as , retreat rights due to excessing and reassignment must be complied with BEFORE a job offer is made to a limited duty employee.

In other words a limited duty employee can not bump a regular employee exercising his/her contractual bidding and seniority rights.

Ye, a job offer to a partially recovered employee may be to residual vacancy (i.e., to a job left vacant after bids are awarded). This kind of assignment can not infringe on PTF seniority rights.

Pursuant to ELM 546.4 an employee injured on the job improperly restored may file an appeal with the Merit Systems Protection Board.

An employee may also file a grievance under Articles 3,5,8,9,13, 19, and 21 with the understanding that OWCP and OPM generally administer restorations rights.

The employee may also appeal to the Merits Systems Protection Board (MSPB) if restorations rights are denied.

The employee may also file an EEO complaint if his/her disability is not properly accommodated.

Several MSPB rulings seem to indicate that an employee may only appeal the denial of restoration and not improper restoration.

The actual law and the OPM regulations indicate that improper restoration can also be appealed.

Appeals to MSPB must be made within 30 days of the failure of management to restore the employee or of management improper restoration.

What should be considered when appealing to MSPB? In addition to those issues described in the previous page(s) issues that could be developed in MSPB appeals are:

- Failure of management to accept clearly documented medical limitations/tolerances.
- Improper medical examination by USPS resulting in failure to restore the employee or improperly accommodate the medical restrictions.
- No interview or incomplete interview was given.
- No in depth analysis of medical limitations was made by management.
- Failure of management to give full explanation of restorations rights and benefits.
- Failure of management to give full particulars regarding title, duties , salary and/or location of work assignment.
- Failure of management to allow scheduled therapy treatments.

What should be considered when filing a grievance? If the steward is filing a grievance on the denial of management to accommodate an employee's disability and/or request for limited duty, it is best to leave out OWCP and/or OPM issues.

The steward will need to show that he/she is grieving a violation of the contract and not the Federal Employees Compensation Act or Office of Personnel Management regulations.

WHY? Because FECA/OWCP is the exclusive remedy for on the job injury issues and MSPB for restoration rights. [34]

The steward should make inquiries to the Local President for directives and advise.

MSPB rulings have stated that a partially recovered employee may not appeal improper restoration to the Board but only capricious and arbitrary denial of restoration.

However, a very unreasonable job offer may amount to a restoration denial and therefore is appealable to the MSPB. However, the employee must prove , by independent evidence , the unreasonableness.

If an MSPB Judge dismisses the appeal because MSPB has no jurisdiction due to the issue not being one of restoration the Judge also must provide the employee with explicit information on what is required to prove the Board does have jurisdiction.

This is starting to sound real legalistic. Should the employee get an attorney? That decision is up to the employee.

Some Locals like the L.A. Local handle appeals for members to MSPB, OWCP and EEOC, as well as , grievances under the contract. Only authorized representatives may process MSPB, EEOC or OWCP appeals in the L.A. Local.

Some Locals do not process MSPB/EEO appeals for what ever reason. However, an employee advocate/ representative does not have to be an attorney. Many lawyers often want retainer fees or payments placed in escrow.

The decision to secure an attorney is strictly up to the employee. But, an employee who comes to the Union for assistance is entitled to the best representation possible.

This is why there are several reminders within this booklet that it is not a legal guide but an educational tool .

It is not my intent to suggest to anyone what process to take. The booklet is intended to be standard operating procedure for handling Article 13 grievances and stewards are expected to comply. **My suggestion to postal employees is– GET HELP !**

ACCOMMODATION

Under federal laws (and some state laws) management must accommodate handicapped workers.
The employee must show a handicap condition to be eligible for accommodation.

The employee must:

- Have a physical or mental impairment that substantially limits one or more of the employee's major life activities such as **a) caring for one's self b) walking, seeing, hearing, speaking, c) performing manual tasks, d) learning, e) breathing, f) *working* that an average person can perform with little or no difficulty.**

- The employee must to be a qualified individual with a disability. He/she must also satisfy the requirements of the position (i. e.,skills, experience , education and other job requirements. Also, the employee must be able to perform the ***essential functions of the position with or without reasonable accommodation.***

- The employee has a record of a physical or mental impairment or is regarded by management as having such an impairment.

NOTE: Under the Americans with Disability Act (ADA) employees with drug or alcohol dependencies are not protected because engaging in illegal use of drugs is an act for which management can discharge employees.

Management must make reasonable attempts to accommodate handicapped employees. Reasonable accommodation may include, but certainly not limited to, job restructuring, modification of work schedules, LWOP, reassignment to vacant position or acquiring or modifying equipment/devices. (Please note that ADA does not require that management lower production standards as an accommodation. But, pursuant to Article 34 of the CBA there are no production standards).

Employees must request reasonable accommodations. The request does not have to be in writing. However, I recommend employees to make it a written request.

THE US SUPREME COURT ruled that when determining if an employee has a disability consideration must be given to whether the employee is substantially limited in performing a major life activity **when using a mitigating measure.**

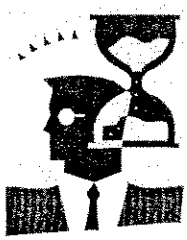
Mitigating measures means things like, medication to control the symptoms, prosthetic limbs, insulin, etc..

So, we not only have to prove that an employee has a disability that impairs a major life function but, we must also show whether mitigating measures fully or partially controls the limitations or cause more limitations.

The request can be submitted by letter, on a PS-13 or PS 1767. What is **required** of the employee is :

- To let management know in plain English that accommodation is needed. EEOC regulations go as far as to give examples of what an employee can say to a supervisor- *"I'm having trouble getting to work at my scheduled starting time because of medical treatments I am undergoing."* This, according to the EEOC is a request for accommodation.
- To request accommodation anytime he/she knows of a workplace barrier that prevents him/her (due to a disability) from effectively performing. Management may request reasonable documentation from the employee that substantiates the disability and need for reasonable accommodation.

Management must respond to an employee's request for accommodation expeditiously. Although "expeditiously" is not defined delays can be violation of the ADA.



To determine if the delay is unreasonable the following factor should be considered:

- The reasons for the delay
- The length of the delay
- How much the employee contributed to the delay.
- What was management doing during the delay.
- If the required accommodations were complex or simple.

Managements' Request for medical documentation must be reasonable and only related to the disability requiring accommodation. In most situations management can not ask an employee for his/her complete medical record because it will contain unrelated information.

Management must specify what type(s) of information they want in regards to the disability, its functional limitations and the need for reasonable accommodation. If necessary, the employee should sign only a limited release form.

BE AWARE– if an employee submits insufficient medical information from his/her doctor management can require the employee to go to a doctor of management's choice. But, management must explain to the employee why the information is insufficient and allow the employee time to submit the missing information.

Management can not demand medical information when the disability and need for reasonable accommodation of the employee has already provided management with sufficient substantiation of a disability and needs accommodation.

Normally an employee can not choose what accommodation he/she wants. Management has to offer a job that removes workplace barriers to provide equal opportunity to perform the job.

The intent of the law is for management to provide reasonable accommodations so an employee can enjoy the benefits and privileges of employment.

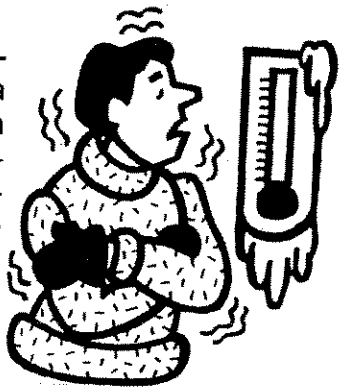
Benefits include training, services, cafeteria access and even parties/social events at work. This extends to information being communicated to everyone else.

TYPES OF ACCOMMODATIONS

Management must accommodate the disabled employee even if it means they must:

Restructure Job - modifications that change (redistribute) the non essential (marginal) job functions an employee is unable to do.

GRANT LEAVE - as necessary for things like getting medical treatment, recovering from an illness related to disability , avoiding temporary adverse conditions at work (such as heaters going out causing extreme cold) for an employee whose condition would be harmed or receiving training related to the medical elements of the disability.



MODIFIED SCHEDULE - management must allow a disabled employee to work a modified or part time schedule as a reasonable accommodation. If the schedule modification is needed and it does not cause undue hardship on USPS, management must provide it. Even extended breaks , if needed , can be granted.

REASSIGNMENT- Management must reassign disabled employees when they can not perform the essential functions of their current position with or without reasonable accommodation.

But, the employee MUST be "qualified " for the new position and reassignment should be the last resort. If management can accommodate the employee on his/her current job so as to allow the employee to do the essential duties management must do so. But, if both the employee and management agree that reassignment is preferred then the reassignment should be made.

Reassignment is to be made without loss of pay or as close to the current pay as possible. If assigned to a lower level job it must equivalent to status, geographical location and benefits. However, a reassignment can not be a promotion. To get such a promotion the employee must bid or compete for any job that result in being awarded a promotion.

MODIFICATION OF POLICIES - If needed to accommodate an employee's disability , and unless management can show an undue hardship, management must modify its policies. Policies like break times, eating at work, sitting while casing, etc. can be modified.

And of course no extra benefits should be granted.

UNDUE HARDSHIP ON THE EMPLOYER

Management will attempt to use the law that allows them to deny reasonable accommodation if it causes "undue hardship."

When management claims "undue hardship" they must base the claim on an individualized assessment of the instant situation and show that accommodation would cause a **significant difficulty or expense.**

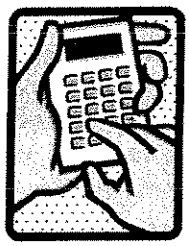
Management's claim that they spend more than $600 million on injury related costs is not a valid reason for its denial of reasonable accommodations.

The laws (ADA, Rehab Act etc.) are intended to cause management to consider all possible sources of funding when assessing whether a particular accommodation is too costly. Management must consider and determine:

$ - the nature and cost of the accommodation.

$- the overall financial resources of the facility, number of employees working, effect on expenses and the resources of the facility.

$- overall size and type of facility. Is it part of a larger organization?



$- type of operation, structure and functions of the workforce, geographic separateness, administrative/fiscal relation to facility needing accommodation.

$- impact of accommodation on operation of the facility.

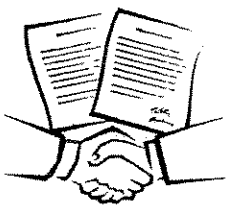
Even if management determines that a particular accommodation will create an undue hardship, if there is an alternative accommodation that will not cause hardship they must provide the second accommodation.

Hardship can not be claimed because of the morale of others may be affected or because of fears or prejudice of other employees.

However, disruption to other employees' abilities to work may be a reasonable issue to consider.

Often management will use the contract as an excuse not to accommodate employees. Under the ADA management is obligated to try and reassign or accommodate an employee so that the workplace barrier is removed without violating the CBA.

However, if this is not possible the law allows for the Union and management to negotiate variances to the contract so management can provide the accommodation.



The exception to this is interesting. If the variance of the contract causes undue hardship on employees (when does management really care about hardship?) assessed on a case by case basis especially as to the duration and severity of adverse effect caused by that variance.

Management must provide evidence of the undue hardship and articulate the significant difficulties or expenses that would be incurred if they provide the accommodation.

The Postal Service Handbook (EL 307) is a good reference source. It contains management's policies on reasonable accommodations.

It gives examples of workplace modifications, disability checklists, references to the Architectural Barriers Act, accommodation examples.

In fact the handbook (and previous issues also) contains excerpts from actual case law. Of course the citations are ones won by the Postal Service.

Nevertheless the Handbook is good reading. Just like the US Postal Service Safety Policy, the official policies of the Postal Service on accommodations, reassignments and treatment of the ill and injured are the best in the USA **on paper!**

But, as any postal employee with more than 90 days of service can attest to– ***Management hardly ever practices what it preaches.***

However, It is up to employees, together with their Union, to fight and ensure management meets its contractual and legal obligations.

FITNESS FOR DUTY EXAMINATIONS

Management claims they can schedule a Fitness For Duty Examination at anytime to safeguard an employee's health and protect the interests of the U.S. Postal Service.

Unfortunately, our experience with postal company doctors has been monstrous. It appears that management uses Fitness For Duty Exams as a means to harass and disrupt employees.

Equally unfortunate is the fact that postal regulations permit such examination. However, they are not exempt from being challenged.

EL 311 allows management to schedule fitness for duty exams if an employee claims or is unable to perform duties because of a disability, occupational injury, non occupational injury, illnesses or injuries. If the employee has less than five years of service , and not eligible to retire, the handbook actually directs the supervisor to terminate the injured worker. (EL 312 is soon replacing the 311)

EL 513 allows management to schedule fitness for duty exams when the reason for sick leave usage is of such a nature as to raise justifiable doubt concerning the employee's ability to satisfactorily and/or safely perform duties.

EL 540 allows management to schedule fitness for duty examination upon medical justification, but in no way is the exam to interfere with treatment for compensable injury. If the postal doctor's opinion or report conflicts with the employee's doctor the issue is referred to OWCP. OWCP makes the determination not management.

CBA under Article 13 allows for fitness for duty examination anytime management questions the status of an employee's light duty. But, the contract provides for a 3rd doctor's opinion if there is conflict between the company doctor and the employee's doctor. The 3rd doctor is selected by the Union and management. The 3rd doctor's opinion is final.

An employee scheduled for a fitness for duty exam is obligated to report or face disciplinary action. All time spent by the employee waiting for the exam and time used for the actual exam is on the clock.

EL 806 is the USPS Medical Handbook. It too allows management to schedule fitness for duty examinations to determine if an employee is able to continue working after extended periods of absences.

ELM Chap. 860 allows management to schedule fitness for duty exams at any time and to repeat as often as necessary.

When a supervisor requests a fitness for duty exam he/she must attach enough information about the employee's duties and working environment to allow the postal doctor to make a well –informed assessment.

MI-EL 860 is a management instruction issued in September 2000. It contains comprehensive instructions for fitness for duty examinations.

These examinations are as a result of concerns about an employee's ability to perform his or her job, based on observations of a supervisor, manager or medical personnel.

What are some of these observation factors? It can be a **significant change or deterioration** in the employee's performance or failure to maintain regular attendance. The reason for an exam can be related to an on the job injury or management identifies a behavior that should be medically evaluated.

Even **marked** increases in rest room use, change in behavior after lunch, **deterioration** of personal hygiene, messy work place and inattention to work duties or **progressive deterioration** in concentration and memory can lead to a fitness for duty examination.

MI EL 860-2000-7 ,as the instructions is referred to, states supervisors should discuss unusual behavior with the employee and offer an opportunity to submit medical or other documentation to explain the behavior and offer the services of EAP.

Form 2492 is used to request a Fitness For Duty Examination, along with a narrative from the supervisor and pertinent documentation in the supervisor's possession.

Fitness For Duty Examinations can be and should be challenged when they are abusive. Even the doctor who gave the exam can be the discriminating official in an EEO complaint. (more on that later).

The supervisor forwards the request to the Installation Head. The Occupational Health Nurse and Labor Relations review the request. The request must have adequate supporting documentation.

A steward should request this documentation in writing when challenging a Fitness For Duty Exam or resultant denial of light duty.

The employee is to be notified in writing of the **date, time and reasons the fitness for duty is necessary.** A fitness for duty assessment is not the exam but the determination of management after the exam is complete. The postal doctor interprets the finds for management and the employee.

The MI states that management can request an emergency fitness for duty exam if a worker **exhibits acute and unusual behavior** that could result in **imminent harm or injury** to the employee or others or interferes with the performance of his/her job.

Management gives examples of behavior that could resort to workplace violence:
Argumentative behavior toward supervisor or other workers, unusual interest in news reports related to violent acts, fighting at work, statements demonstrating specific plans being made to bring harm through violence and of course substance abuse.
The supervisor is to get concurrence from the facility manager , the occupational nurse or contract doctor informing them that an emergency examination is needed after which the employee is to appropriately transported to the medical facility. The MI does not state who transports or how the transportation is to be provided.

Stewards MUST not lend themselves to transporting employees to medical facilities without express authorization from the Local President.

The MI goes into the evaluation of an employee's mental status and on assessing the effects of psychotropic medicines. Dangerous assessment is to be addressed by the doctor. This includes questions such as, are to the employee posing a threat, the nature and severity of the potential harm, the likelihood that the harm will occur , the imminence of the harm and actions required to content with the problem.

Psychiatric Fitness For Duty Exam pose an interesting challenge. They should normally follow a general fitness for duty exam.

When a Psychiatrist exams an employee Attachment 2 Instructions has to be completed by the doctor. A steward should request this document when challenging these types of exams or resultant adverse actions.

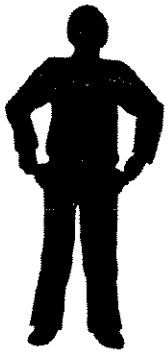
In some Local's past practice provides that an employee can request a representative to be present during the exam. Only stewards authorized by the Local President should attend these examinations as Union Representatives.

Usually, the results of the fitness for duty exams are sent from the examining doctor to USPS medical personnel, who in turn issue notice to management.

Management normally sends notice to the employee. Often there is an interview with the employee. An authorized shop steward may be present if the employee so desires.

Do not expect management to be kind and gentle. They are determined to reduce the work force. If the employee is found unfit he/she may be given options such as retirement or terminations but rarely is light duty offered first. The employee should challenge the results as appropriate and if need be request Light/Limited Duty. The employee can also submit a request for the medical report to be sent to his/her doctor.

SURVIVING WHEN LIGHT DUTY IS DENIED



Many postal workers live check to check and most are only able to sustain themselves up to two pay periods without income.

When an employee is injured at work he/she can file a Workers Compensation claim with their immediate supervisor. The payment of compensation is not steady or reliable. Things get even worse if the paperwork or medical report somehow gets fowled up or management decides to play games.

Employees injured off the job must rely on sick or annual leave ,as well as, any fringe benefit accident or insurance plan.

I believe it is safe to say that most, if not all, injured workers want to work. As soon as they can get back to work they will.

As discussed in previous parts of this booklet the union has negotiated the light/limited duty provisions as protection against economic loss.

But what about salary if light/limited duty is denied? This is a personal matter but there are some things to consider:

1. An employee may use sick leave. However, on the PS 3971 the employee should state- "Forced to use leave-failure to accommodate". The employee should then file a grievance for the denial of light duty **and** to have the leave restored. Sick leave , if approved, will cover the employee without loss of income for a while.
2. An employee may use emergency annual leave. On the PS 3971 the employee should state "Forced to use leave-failure to accommodate." Depending on the leave balance this too can provide income for a time being. A grievance for the denial of light/limited duty should be filed and for leave restoration.
3. A employee, who was on the rolls of OWCP who partially recovered and management refuses to provide limited duty , may file a CA-7 for workers compensation.

The employee should write a letter to OWCP and inform them that management has failed to provide suitable employment. It is going to take some time to get OWCP to respond and provide compensation. After a two week period the employee should follow up with a call to:

- The Claims Examiner at OWCP.
- The Claims Examiner Supervisor
- U.S. Congressman/ U.S. Senator
- USPS Injury Comp. Office

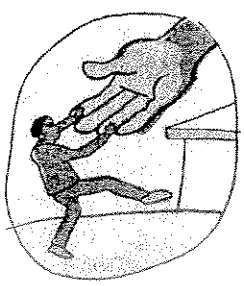
4. Employee may apply for SSI at the closest Social Security Administration office. He/she also must provide a medical statement as to the disability. SSA determines eligibility.

5. An employee may choose not to take sick or annual leave and instead file for unemployment insurance with the state unemployment office. Depending of the state laws an employee may be eligible for several weeks of payments, and may also qualify for food stamps.
6. Benevolent Fund Assistance. The L.A. Local and some other locals offer assistance to employees suffering at the hands of management. The L.A. Local , for instance, helps employees with food . The AFL-CIO has community assistance programs for union members that can help pay for utilities and other necessities. Also, fringe benefit programs like the APWU Accident Benefit Associations or Voluntary Benefits Program may offer different insurance coverages,
7. Of course, employees are going to seek leave restoration , leave buy back, full back pay and benefits through the grievance, EEO, MSPB procedures.

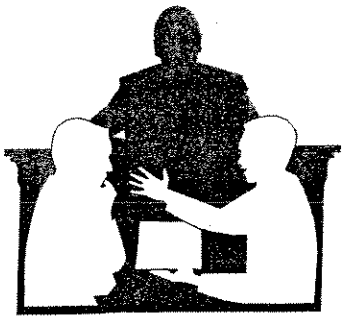
It is not going to be an easy battle. The employee has to realize he/she is fighting a $70 billion dollar corporation of the US Government.

But, the union member is not alone. The Union is a valuable asset to postal employees. The Union is only obligated to represent non-members in the grievance-arbitration procedure. The Union is NOT:

- Obligated to file EEOs for non members.
- Obligated to file MSPBs for non members.
- Obligated to assist non-members with OWCP claims.
- Provide assistance with food or utilities.



IT PAYS TO BELONG ! !



FIGHTING BACK

Previous parts of this booklet have made reference to various forms of appeals.

Let us review them again:

GRIEVANCE-ARBITRATION PROCESS

Stewards are reminded to apply all the principles of investigation, facts gathering, documentation and presentation when handling Light Duty issues at Step 1.

The time limit for filing a grievance is 14 calendar days from the date of the infraction (e.g., light duty denied, schedules altered, bumping etc. (Please review pages 2-11).
There are several ways in which to appeal these grievances:

- **Article 2** - appealed directly to Step 2 if contending there is discrimination. **Make sure to also cite all other applicable contract articles in brackets.** Of course, the case must be fully developed and the remedy stated in a clearly well rationalized statement. The case file must not be delayed. The Step 2 Union Designee will prepare the appeal and meet within 7 days. These type of issues must not be delayed. Line 6 & 7 should state that the grievance is appealed pursuant to Article 2 !

  If the grievance is not resolved or settled at Step 2 it is appealed to Step 3. One way to appeal the grievance directly to arbitration is to make the main thrust of the grievance violations of the health of the employee and the LMOU. The issue may be stated on the Step 2 appeal as a - VIOLATION OF PROHIBITED DISCRIMINATION/LMOU. (or something similar)

- **Article 14-** appealed directly to the Joint Labor-Management Safety and Health Committee. This type of appeal must be filed within 15 days. (Be careful when doing this– get direction from the Local Office). The Committee may not meet soon enough to address the problem. Denials by the Committee can be appealed directly to arbitration. The issue may be stated on the Step 2 appeal as a– VIOLATION OF LIGHT DUTY RESPONSIBILITY/ LMOU

- **Article 13/30**– must be filed within 14 days of the infraction at Step 1. Please review the SOP found in pages 2-11. The grievance must be filed at Step 2 within 10 days of securing the supervisor's initials. The Step 2 Union designee develops the appeal and meets with the Employer within 7 days. If the grievance is denied it can be appealed directly to arbitration if the main thrust is a violation of the provisions of the LMOU. The issue may be stated on the Step 2 appeals as a- VIOLATION OF LIGHT DUTY RESPONSIBILITY/ LMOU

Remember to cite all other relevant contract articles in your appeal and fully document the case.

THIS REVIEW IS AN OVERSIMPLIFICATION OF THE GRIEVANCE-ARBITRATION PROCESS. REVIEW ALL TRAINING MATERIALS AND DIRECTIVES ISSUED BY THE LOCAL ON GRIEVANCE PROCESSING AND APPEALS.

UNEMPLOYMENT INSURANCE CLAIMS

These claims are filed with the State Unemployment Office (EDD) usually over the phone. Employees usually have to wait for a period of time before they can file (check with your unemployment office). In some cases postal management may challenge the claim. However, an employee should proceed with an appeal and request a hearing. The L.A. Local provides representation for members in unemployment hearings. The employee should contact the Local Union Office for assistance or direction. (see section on Surviving When Light Duty Is Denied)

SSI

An employee may make a claim for assistance from the Social Security Administration. The employee should contact the closest SSA Office (call information for phone number). The process may be some what bureaucratic but it is available. The SSA will make a determination on eligibility to receive benefits. Sick leave usage or availability may be an issue ,as well as, spouse's ability to provide subsistence. The Local will issue more information on this issue in the near future.

FOOD STAMPS

Depending on the circumstances employees may go to the County Office and request assistance. Usually the unemployment office or other state office directs the employee on how to secure food stamps. The employee must be careful not to be charged with double dipping.

OWCP APPEALS

The Office of Workers Compensation Programs (OWCP) usually issues notice of appeal rights. Most appeal time limits for OWCP issues are 30 days.

However, I am addressing the failure of management to restore an employee to employment, denial of limited duty resulting in lost time, improper job offer etc. (Please see Limited Duty section.)

An employee should secure representation in these matters. Often time what an employee writes will be used against him/her by OWCP to reject a claim or deny a benefit.

A well written letter identifying the case number and the issue along with a medical statement may suffice depending on what is being appealed.

Stewards who are not authorized to handle workers compensation issues should refer the employee to the Local Union Office for assistance. Do not just refer the employee. Prepare the employee by reviewing the issues and providing preliminary information of what may be needed. (see Light Duty section)

MERIT SYSTEMS PROTECTION BOARD

MSPB is a very legalistic appeals system that has a strict protocol on procedures. There is no particular form required as long as all the information needed on the appeal is provided.

It is best to use the MSPB Form. It will ask various questions including what "defenses" the employee is contending, issues of discrimination, harmful error and violations of law. (see section on Restoration Rights)

An MSPB Administrative Judge will issue an Acknowledgement Order that will direct the Postal Service and the employee to take specific actions.

In MSPB proceedings the record is pretty much established before the issue ever gets to a hearing. The Administrative Judge has wide legal discretion on matters of law. However, the judges ruling may be appealed to the full Board and ultimately result in the filing of a suit in federal court.

EEO COMPLAINT PROCESS

An EEO request for counseling may be filed (along with a grievance depending on current Local policy) within 45 calendar days of when the employee was discriminated against.

Normally within 21 days of receipt of the EEO counseling request management conducts a final interview. The employee may file a formal EEO complaint within 15 days of receipt of the final interview.

Issues to consider:

- We DO NOT participate in REDRESS.
- When requesting EEO counseling an employee does not have to use management's form. The L. A. Local has developed an EEO Form. On that form when stating the issue it should be general but precise. (e.g., " I was denied reasonable accommodation and treated differently than others who management considers able bodied." OR " Management has refused to honor my request for reasonable accommodation and is jeopardizing my health by deliberately refusing to abide by its own policies and applicable laws/regulations".)
- At this point comparative employees do not have to be cited. In fact the employee does not have to prove anything at this point. **However, in EEO cases the burden of proving a violation of the law is with the employee not the postal service. (see section on Accommodation)**
- The remedy must be properly developed and stated. The remedy can be very general and be made more specific as the EEO progresses through the system.
- The employee must meet all time limits.
- The employee should cite other **purviews** (e.g., race, color, sex, age { if 40+ years old}) in addition to **disability**. If necessary as the complaint goes through the system the other purviews can be dropped or modified if a prima facie case cannot be established for any one of them.

At the formal stages the process becomes more legalistic. Management will make several attempts to reject the complaint. Please refer to the Local's Booklet on EEO Processing. Only authorized Stewards may represent employees beyond the initial filing of the counseling request as per Local Policy.

This review is an over simplification of the process. Please be aware that these appeal forums need special case management. Only duly authorized and trained advocates should attempt to handle such appeals.