



JUL 14 1999

File Number:

Mr. Sidney L. Brooks
American Postal Workers Union, AFL-CIO
1300 L Street, N. W.
Washington, D. C. 20005

Dear Mr. Brooks:

I am writing in reply to your letter of June 30, 1999, regarding the interpretation of 20 C.F.R. 10.506 by the Postal Service. I had also received a letter dated June 23, 1999 from Lu-Ann Glaser on this same subject. A memorandum of January 21, 1999, from Larry Anderson of the Postal Service to his staff, was attached to Ms. Glaser's letter. I am enclosing a copy of Ms. Glaser's letter, with the attachment, to this letter for your reference.

By letter of this date, I have advised Mr. Anderson of the Postal Service that all telephone, personal, and written communication, regardless of how it is transmitted, including FAX, email, or any other form of transmitting a request, between agency personnel and a physician or members of his or her staff, is covered by 20 C.F.R. 10.506. I have asked Mr. Anderson to instruct his staff accordingly.

A copy of my letter to Mr. Anderson is enclosed for your reference. If I may be of any further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Sheila M. Williams".

SHEILA M. WILLIAMS
Acting Director for
Federal Employees' Compensation

Enclosures



U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Federal Employees' Compensation
Washington, D.C. 20210



JUL 14 1999

File Number:

Mr. Larry B. Anderson, Manager
Safety and Risk Management
U.S. Postal Service
475 L'Enfant Plaza
Washington, D. C. 20260-4232

Dear Mr. Anderson:

A copy of your January 21, 1999 memorandum, regarding the new FECA Regulations, addressed to all Human Resource Managers and all Injury Compensation Area Analysts, was provided to me by the American Postal Workers Union. Your memorandum addresses the provisions of 20 C.F.R. 10.506, which prohibits telephone or personal contact with an employee's attending physician by the employer, and limits written communication from agency personnel to a physician to the subject of work limitations.

Your memorandum states that this FECA Regulation neither limits communication by FAX or email nor prevents a physician from initiating telephone or personal contact with the Postal Service. You also state that you can contact a physician by telephone to see if a FAX has been received or to ascertain the status of a request for information.

This is to advise you that communications by FAX or email most certainly are written communications and are subject to the limitations outlined in 20 C.F.R. 10.506. The Regulations do not distinguish between various methods of transmitting a request. The obvious intent is to limit the communication between agency personnel and physicians to written requests for information necessary for an agency to assess an employee's ability to perform full or light duties. Written communication, regardless of how it is transmitted to the physician, is limited to information regarding fitness for duty.

In addition, a copy of all written communications to and from a physician must be provided to OWCP and the employee. If a communication is sent by FAX or email, and the employee is not able to receive their copy by the method through which the original is transmitted, they should be provided with a copy through the U.S. Mail.

Any and all telephone contact initiated by the agency, regardless of the subject, is entirely prohibited. There is no exception made for follow up requests. Telephone or personal contact with members of a physician's staff is considered contact with the physician, and is also prohibited.

Please instruct your staff to cease all telephone communication with employee's physicians; to limit all written communications, whether transmitted by FAX, email, U.S. Mail, or any other means, to information regarding fitness for duty; and to provide a copy of all written communication to and from an employee's physician to OWCP and the employee. Your prompt documentation that this correction has been made would be appreciated.

Sincerely,

SHEILA M. WILLIAMS
Acting Director for
Federal Employees' Compensation



January 21, 1999

MANAGER, HUMAN RESOURCES (ALL AREAS)
AREA ANALYSTS (INJURY COMPENSATION)


SUBJECT: New Regulations Governing the Administration of the Federal Employees' Compensation Act

The Office of Workers' Compensation Programs (OWCP), U. S. Department of Labor issued new regulations governing the administration of the Federal Employees' Compensation Act (FECA) effective January 4, 1999. The Postal Service is in the process of revising its manuals and handbooks to comply with the new regulations. However, there is one specific change to the regulations that has an immediate impact on our administration of the program for which we find it necessary to issue interim compliance guidance.

The specific regulation is 20 CFR 10.506, which limits contact with the injured employee's physician to written communications concerning work limitations. The new rule specifically prohibits phone or personal contact initiated by the employer with the physician. Therefore, effective immediately, the Postal Service will cease initiating direct telephone contact or personal contact with the employee's treating physician when information is needed concerning the employee's duty status. This change does not limit communications by FAX or email, nor does it prevent the physician from initiating telephone or personal contact with the Postal Service. All requests for information should be sent via FAX or email to the physician's office.

Further, telephone contact with the physician's staff to determine if a FAX has been received or to ascertain the status of a request for information do not appear to be prohibited. Copies of FAX and email messages must be maintained in the claim file and provided to OWCP in the same manner as other pertinent information. Finally, any telephone or personal contact initiated by the employee's physician should be documented in writing and provided to OWCP.

If you have any questions concerning this instruction, please contact Richard Bauer at extension 3678.


Larry B. Anderson
Manager
Safety and Risk Management

cc: Yvonne D. Maguire
George Butler
Neva Watson
Richard Murner

LABOR RELATIONS



March 1, 1995

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

MAR 1995

Vice Pres

Dear Bill:

This letter is in regard to your correspondence of February 2 regarding the removal of employees who submitted Forms CA-2 that were subsequently denied by the Office of Workers' Compensation (OWCP).

It is not the Postal Service's position to discharge an employee for reporting an on-the-job injury or for the filing of an OWCP claim. However, employees may be discharged for reasons such as excessive attendance problems, working excessively in an unsafe manner, absent without leave, or the filing of false information concerning an employee's physical condition for the purpose of obtaining or continuing OWCP benefits. Case Number H9C-IC-D 93031615 dealt with the attendance deficiencies of an employee, therefore, distribution of this decision should not be construed by the field as supporting the removal of employees for submitting Forms CA-2.

If there are any questions regarding the foregoing, please contact Thomas J. Valenti of my staff at (202) 268-3831.

Sincerely,

A handwritten signature in cursive script that reads "Frank X. Jacquette III".

Frank X. Jacquette III
Acting Manager
Contract Administration (APWU/NPMHU)
Labor Relations

cc: Managers, Human Resources (All Areas)

LABOR RELATIONS



February 23, 1995

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

This letter is in response to your correspondence of February 2 regarding the removal of employees who submitted Form CA-2 that were subsequently denied by the Office of Workers' Compensation.

Your inquiry is being investigated. Upon completion, you will be apprised of the results.

In the interim, if there are any questions regarding the foregoing, please contact Thomas J. Valenti of my staff at (202) 268-3831.

Sincerely,

A handwritten signature in cursive script, appearing to read "Frank X. Jacquette III".

Frank X. Jacquette III
Acting Manager
Contract Administration (APWU/NPMHU)
Labor Relations

▲
FEB 1995
Received
Office of The
Executive
Vice President



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

February 2, 1995

Dear Tony:

William Burrus
Executive Vice President
(202) 842-4246

Information recently received reveals that postal officials are initiating disciplinary action, including removal, against postal employees who file claims for on-the-job injuries. In Atlanta, Georgia employees have been issued removals for submitting Form CA-2 that were subsequently denied by OWCP. Based upon the OWCP denials, management assumed that the claims were fraudulent and issued a removal based in part on the submission for Compensation.

National Executive Board

Moe Biller
President

William Burrus
Executive Vice President

Douglas C. Holbrook
Secretary-Treasurer

Thomas A. Neill
Industrial Relations Director

Robert L. Tunstall
Director, Clerk Division

James W. Lingberg
Director, Maintenance Division

Donald A. Ross
Director, MVS Division

George N. McKeithen
Director, SDM Division

Recent discussions with union officials at the Remote Encoding Centers reveal that Transitional employees are routinely being removed from employment for reporting injuries.

In support of this activity, the Postal Service has responded in case #H9C-1C-D 93031615 that the filing of OWCP claims is not "protected activity". The distribution of this decision will further support the practice of taking disciplinary action in retaliation for the filing of OWCP claims.

I understand the law prohibit taking of disciplinary action against an employee for the filing of a OWCP claim, including the imposition of a \$500 fine or one year in prison for an official who participates in such activity.

I would hope that we can resolve this matter and issue appropriate instructions to apply the OWCP regulations as intended.

Thank you for your attention to this matter.

Regional Coordinators

James P. Williams
Central Region

Philip C. Flemming, Jr.
Eastern Region

Elizabeth "Liz" Powell
Northeast Region

Archie Salisbury
Southern Region

Raydell R. Moore
Western Region

Sincerely,

William Burrus

Executive Vice President

*Anthony Vegliante, Manager
Grievance and Arbitration Division
United States Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260*

WB:rb

LABOR RELATIONS



March 1, 1995

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

MAR 1995
Vice President

Dear Bill:

This letter is in regard to your correspondence of February 2 regarding the removal of employees who submitted Forms CA-2 that were subsequently denied by the Office of Workers' Compensation (OWCP).

It is not the Postal Service's position to discharge an employee for reporting an on-the-job injury or for the filing of an OWCP claim. However, employees may be discharged for reasons such as excessive attendance problems, working excessively in an unsafe manner, absent without leave, or the filing of false information concerning an employee's physical condition for the purpose of obtaining or continuing OWCP benefits. Case Number H9C-IC-D 93031615 dealt with the attendance deficiencies of an employee, therefore, distribution of this decision should not be construed by the field as supporting the removal of employees for submitting Forms CA-2.

If there are any questions regarding the foregoing, please contact Thomas J. Valenti of my staff at (202) 268-3831.

Sincerely,

A handwritten signature in cursive script that reads "Frank X. Jacquette III".

Frank X. Jacquette III
Acting Manager
Contract Administration (APWU/NPMHU)
Labor Relations

cc: Managers, Human Resources (All Areas)

LABOR RELATIONS



February 23, 1995

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

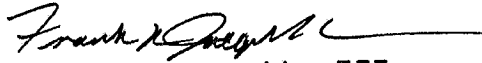
Dear Bill:


This letter is in response to your correspondence of February 2 regarding the removal of employees who submitted Form CA-2 that were subsequently denied by the Office of Workers' Compensation.

Your inquiry is being investigated. Upon completion, you will be apprised of the results.

In the interim, if there are any questions regarding the foregoing, please contact Thomas J. Valenti of my staff at (202) 268-3831.

Sincerely,


Frank X. Jacquette III
Acting Manager
Contract Administration (APWU/NPMHU)
Labor Relations


FEB 1995
Received
Office of the
Executive
Vice President



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

February 2, 1995

Dear Tony:

William Burrus
Executive Vice President
(202) 842-4246

Information recently received reveals that postal officials are initiating disciplinary action, including removal, against postal employees who file claims for on-the-job injuries. In Atlanta, Georgia employees have been issued removals for submitting Form CA-2 that were subsequently denied by OWCP. Based upon the OWCP denials, management assumed that the claims were fraudulent and issued a removal based in part on the submission for Compensation.

National Executive Board
Moe Biller
President

Recent discussions with union officials at the Remote Encoding Centers reveal that Transitional employees are routinely being removed from employment for reporting injuries.

William Burrus
Executive Vice President

In support of this activity, the Postal Service has responded in case #H9C-1C-D 93031615 that the filing of OWCP claims is not "protected activity". The distribution of this decision will further support the practice of taking disciplinary action in retaliation for the filing of OWCP claims.

Douglas C. Holbrook
Secretary-Treasurer

Thomas A. Neill
Industrial Relations Director

Robert L. Tunstall
Director, Clerk Division

James W. Lingberg
Director, Maintenance Division

I understand the law prohibit taking of disciplinary action against an employee for the filing of a OWCP claim, including the imposition of a \$500 fine or one year in prison for an official who participates in such activity.

Donald A. Ross
Director, MVS Division

George N. McKeithen
Director, SDM Division

I would hope that we can resolve this matter and issue appropriate instructions to apply the OWCP regulations as intended.

Regional Coordinators

James P. Williams
Central Region

Thank you for your attention to this matter.

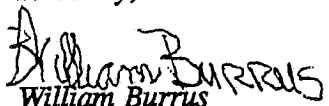
Philip C. Flemming, Jr.
Eastern Region

Elizabeth "Liz" Powell
Northeast Region

Archie Salisbury
Southern Region

Raydell R. Moore
Western Region

Sincerely,


William Burrus
Executive Vice President

*Anthony Vegliante, Manager
Grievance and Arbitration Division
United States Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260*

WB:rb



Mr. James McCarthy
Assistant Director
Clerk Craft Division
1300 L Street N.W.
Washington DC 20005-4128

Re: H90C-1C-D 93031615
N. CARTER
WILMINGTON, DE 19850-9993

Dear Mr. McCarthy:

On April 8, 1994, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The union contends that the grievant was issued a notice of removal as reprisal for filing a claim of on the job injury (CA-1), and that such filing constitutes "protected activity" as described in Section 10. d. of the Memorandum of Understanding between the USPS and the APWU, re: Transitional Employees.

It is our position that no national interpretive issue involving the terms and conditions of the National Agreement is fairly presented in this case. However, inasmuch as the union did not agree, the following represents the decision of the Postal Service on the particular fact circumstances involved.

The grievant received a notice of removal for her attendance deficiencies. The Memorandum of Understanding between the USPS and the APWU, re: Transitional Employees states in Section 10:

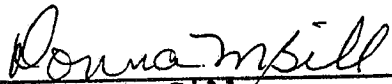
- a. The parties recognize that transitional employees will have access to the grievance procedure for those provisions which the parties have agreed apply to transitional employees.
- b. Nothing herein will be construed as a waiver of the employer's obligation under the National Labor Relations Act. Transitional employees will not be discharged for exercising their rights under the grievance-arbitration procedure.
- c. Such employees will not be protected by the "just cause" provision of Article 16. However, the employer cannot retaliate against transitional employees for filing grievances or invoking applicable contractual rights.

- d. In any arbitration case concerning a discharge of a transitional employee, the union will bear the burden of proof in establishing that the employer's chief motivation for such discharge was for retaliation for protected activity.

The "protected activity" referenced in "d" above, is that defined in "b... Transitional employees will not be discharged for exercising their rights under the grievance-arbitration procedure." As such, the filing of a CA-1 does not constitute "protected activity" as intended by the parties in the MOU.

In view of the foregoing, this grievance is denied.

Time limits were extended by mutual consent.



Donna M. Gill
Grievance and Arbitration
Labor Relations

1/31/95