

**A guide to handling
grievances concerning
assignment of employees
injured on duty in the U. S.
Postal Service.**

**Douglas Blakely
National Business Agent
Northwest Region**

H1C-5D-C 2128

Bend, Oregon

Arbitrator, Benjamin Aaron

Decision Date 1/31/83

Denied

The APWU grieved when a full-time injured Rural Letter Carrier placed in the clerk craft as full-time clerk. Arbitrator Aaron opined that to deprive the RC of their full-time status would deprive the employee of a benefit that was protected under FECA regulations. The USPS promulgated changes to part 540 of the ELM and published those changes in Postal Bulletin 21215 in 1979. Arbitrator Aaron stated that the FECA regulations and subsequent changes that allowed for this action were properly submitted to the union and the APWU raised no objection. He stated in his decision that:

"it is obviously too late in the day for the Union to challenge the proposition that FECA regulations can augment or supplement re-reemployed persons contractual rights. The language of Article 21 Section 4 of the 1981-1984 Agreement, previously quoted, makes it clear that the rights of such persons can be augmented or supplemented by federal regulations, with which the Postal Service must comply."

In this case the APWU argued Article 1.2, Article 13, Article 19. and Article 21. Article 37.2, were never argued. This grievance was denied by Arbitrator Aaron who agreed the reassignment of the injured rural carrier to the clerk craft as a full-time employee was proper under the contract and the law.

H1C-4K-C 17373

Ottumwa, IA

Arbitrator Richard Mittenthal

Decision Date: 1/4/85

Denied

The Postal Service reassigned an on-the-job injured carrier to the Clerk Craft. The APWU urged that the resultant carrier craft vacancy should have been posted for bids by employees in the Clerk Craft. The Postal Service insisted Article 13 was not applicable to the situation in this case. A later medical examination revealed the letter carrier injuries would be permanent and he would be unable to perform carrier work. Management created a clerk craft job for him consistent with his physical restrictions. It described the job, a full-time regular Distribution Clerk, as a "limited duty... assignment." The job he filled had not previously existed as a full-time position. Management stated, "It offered the job pursuant to 546.14 of the ELM.

The APWU complaint was based on the language of Article 13, Section 5. In other words, the APWU maintains that when the injured full-time regular carrier was unable to perform his carrier's duties and was permanently reassigned to the Clerk Craft, then the resultant carrier vacancy should have been posted to the "gaining craft".

The arbitrator ruled that Article 13 is triggered and comes into play when there is a voluntary request for reassignment by the employee. In this case, he ruled, the reassignment was done under FECA regulations and the ELM, Section 540.

NIW-1J-C 23247

Arbitrator Neil Bernstein

Decision Date: 8/7/87

New Haven, CT

Sustained

The Postal Service permanently reassigned a full-time injured letter carrier, who was performing limited duty, to the Clerk Craft. The injured letter carrier had been performing a variety of limited duty tasks within the letter carrier craft and within normal daytime working hours. The carrier was reassigned to the clerk craft as a distribution clerk and was assigned evening hours. The NALC argued the reassignment violated the National Agreement on transfers between crafts and is inconsistent with the ELM, Section 546. Finally the NALC argued that Arbitrator Mittenthal's decision in USPS case # 17373 did not dispose of this dispute.

The arbitrator concluded that the Service violated the National Agreement by involuntarily assigning an employee disabled by a compensable injury from one craft to another. This arbitrator ruled that in the Mittenthal case, the grievant was not coerced into taking the position, as argued by the APWU. Therefore it was a voluntary reassignment in the Mittenthal case.

This arbitrator ruled that the Service could only make involuntary reassignments across craft lines that satisfy the criteria of Article 12. The arbitrator ruled Section 546 of the ELM was barred by the specific mandate in the section that the Service "should minimize any adverse or disruptive impact on the employee".

Arbitrator Bernstein stated, **Section 546.14 must be read to impose a continuing duty on the Service to always try and find limited duty work for injured employees in their respective craft, facility and working hours."**

N7N-4Q-C 10845

DeSoto, Missouri

Arbitrator, Carlton Snow

Decision Date 12/19/91

Sustained

A clerk was involuntarily transferred into the carrier craft and was given a new seniority date. The NALC challenged the necessity of the reassignment. The APWU intervened and challenged the seniority application arguing that Article 12 required the employee to be assigned on day junior to the junior regular letter carrier. The NALC argued that under their craft rules, the reassigned employee should begin a new period of seniority. The arbitrator agreed with the NALC that the craft articles prevail in such a circumstance and a new period of seniority is initiated when entering the new craft.

H0C-3N-C 418
Arbitrator Carlton Snow
Decision Date: 2/7/94

WASHINGTON, DC

Sustained

The Postal Service reassigned a full-time employee who was partially recovered from an on-the-job injury to full-time regular status in the Clerk Craft. Management concluded that the injured employee had partially recovered from his injury and could return to work subject to medical limitations. Because of those limitations, the employee was not able to return to the Carrier Craft. Accordingly, management assigned him to the Clerk Craft. Initially, he received a part-time flexible position, but the Employer subsequently changed his status to that of a full-time regular employee. The Postal Service took the position the reassignment was consistent with federal law (FECA) and the ELM.

The Union filed a grievance contending that the reassignment of the former full-time Carrier Craft employee to full-time status in the Clerk Craft violated, among others, Article 37 of the parties collective bargaining agreement. According to the Union, the conversion was to the detriment of at least ten part-time flexible distribution clerks who enjoyed greater seniority than the reassigned carrier.

The arbitrator ruled that the Employer violated the parties' collective bargaining agreement when it reassigned a full-time employee who was partially recovered from an on-the-job injury to full-time status in the Clerk craft. Unless in an individual case, the Employer can demonstrate that such assignments are necessary, notwithstanding the conversion preference expressed in the parties agreement, the employer shall cease and desist from reassigning partially recovered employees to full-time status when those reassignments impair the seniority of part-time flexible employees.

He also ruled the Postal Service must make every effort to find work for the employee in their respective craft, facility and hours of work.

G94C-4G-C 96077397	Edmund, OK
Arbitrator, Bernard Dobranski	
Decision Date 6/1/99	Denied

A injured letter carrier was assigned to a permanent limited duty assignment as a Special Delivery Messenger. Some of the duties were also clerk craft duties. NO ADVANCE NOTIFICATION was given to the union about the mixed assignment and the union did not become aware of the assignment until one year later. The arbitrator ruled that Article 7.2 did not apply regarding the requirement to notify the union of a "mixed assignment" in circumstances such as the application of 546 of the ELM. He ruled it was not a combined assignment within the meaning of Article 7.2,A.

J90C-1J-C 92056413

Arbitrator Bernard Dobranski

Decision Date 6/14/99

Traverse City, MI,

Denied

A rural letter carrier was injured on the job and was reassigned TEMPORARILY to the clerk craft while recuperating. The APWU argued that the rural carriers have no access to the Clerk Craft bargaining unit. This interpretation by the APWU was based on a memorandum of understanding signed in 1978 by the six unions which did not include the rural carrier craft. The USPS argued its obligation under FECA to provide meaningful work for injured employees. The arbitrator agreed with the USPS and cited the Aaron decision of 1983

H94N-4H-C 96090200

Memphis, TN

Arbitrator Snow

Decision Date 11/4/98

Sustained

The Postal Service reassigned a full-time regular letter carrier to the clerk craft as a part-time flexible. The NALC challenged this assignment stating that if a full-time letter carrier is reassigned to another craft, they must be transferred to a full-time regular position. The employer argued that ELM 546 is silent with regard to the status of reassigned employees and that absent contractual language to the contrary, this is an area of decision making reserved to management under Article 3. The APWU intervened in this case arguing that employees must enter the craft as a part-time flexible employee if there already are part-time flexible employees in the clerk craft of that installation.

The arbitrator ruled that requiring the letter carrier to accept a position in another craft as a part time flexible violated the NALC bargaining agreement. Additionally the arbitrator ruled that if reassigning the letter carrier to another craft would violate the gaining crafts bargaining agreement, the employer must bargain over those rights to insure that neither union's bargaining agreements are compromised. The remedy in this case was remanded to the parties for resolution.

Following the remand, the NALC and the USPS entered into a bilateral agreement to promote any reassigned PTF carriers to full time and make nominal payments for their allegedly improper reassignment as PTF's. Any reassigned carrier was to be re-evaluated to see if they could return to the carrier craft and resume carrier duties.

The Second Time Around

H94N-4H-C 96090200	Memphis, TN	Arbitrator	Snow
Decision Date	1/14/02	Arbitrable	

The APWU requested Arbitrator Snow re-open the case citing that the remedy had been remanded to all parties and the USPS and NALC had no right to make the bilateral settlement without APWU agreement. Arbitrator Snow ruled in favor of the APWU and re-opened hearings. The USPS and NALC challenged the arbitrators authority to hear the dispute. They claimed that the issue had been resolved between the two original parties. In January of 2002 Arbitrator Snow ruled that the remedy issue was arbitrable and he will take evidence and hear testimony regarding the appropriate remedy. Those hearings have not yet been completed.

The Third Time Around

H94N-4H-C 96090200	Memphis, TN	Arbitrator	Snow
Decision Date	2/17/04	Sustained	

Arbitrator Snow ruled again on February 17, 2004 clarifying his opinion in case #H94N-4H-C 96090200 (Tate, Memphis, TN). The reason for his re-hearing of this case was that the Postal Service and the NALC entered into an agreement following the Tate decision that promoted all Letter Carriers who had been reassigned jobs in other crafts as PTF's, to Regular Status. The APWU was not a part of that negotiation and sought to vacate that settlement. Arbitrator Snow agreed with the APWU and held new hearings on the case.

Of importance in this case is that the USPS argued that Arbitrator Snow's decision in 1998 (1st Tate Ruling) overturned in his 1994 ruling in case HOC-3N-C-418. Arbitrator Snow rejected the USPS position and ruled that his 1994 ruling stands in force. The arbitrator also ruled that when a injured employee is moved into another craft, the employer must follow that crafts provisions and must bargain to make any changes, such as seniority or status.

With this decision Arbitrator Snow has clarified the APWU's position that when a injured worker is reassigned to the Clerk Craft, they are to begin a new period of seniority. Additionally, if the Clerk Craft has any PTF employee's, the reassigned injured employee must be reassigned as a PTF employee under both Step 4 agreements and Arbitrator Snow's decision HOC-3NOC 418, dated 2/7/94. All quoted decisions in this packet are National Level Decisions and not regional decisions. The reasoning in these decisions must be followed by regional arbitrators.

E90C-4E-C 95076238	Phoenix, AZ
Arbitrator Shyam Das	
Decision Date 10/31/02	Denied

The APWU grieved the permanent reassignment of an injured letter carrier to a General Clerk position in Phoenix Arizona. The issue presented by the APWU was whether the duties of the rehabilitation position, created for an employee with work restrictions due to an on-the-job injury, must be posted for bid to all clerk craft employees. It was the union's position that the assignment of a PTF to a fixed schedule violated the Article 37.3 bidding and posting provisions of the bargaining agreement.

Arbitrator Das ruled that rehabilitation assignments that are not residual vacancies in the clerk craft are positions uniquely created to fit the restrictions of an injured worker. Creating such a position is not in violation of Article 37.3 and is within managements rights under 540 of the ELM and Article 3.

The arbitrator did leave the door open for the union to challenge if a particular rehabilitation assignment actually is a uniquely created position under 546 of the ELM.



UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

Mr. Kenneth D. Wilson
Assistant Director
Clerk Craft Division
American Postal Workers Union,
AFL-CIO
817 14th Street, N. W.
Washington, D.C. 20005-3399

ARTICLE	37
SECTION	3E7
OFFICE	
REHAB	

Re: Class Action
El Paso, TX 79910
H1C-3A-C 27026

Dear Mr. Wilson:

On February 7, 1984, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The question in this grievance is whether management properly assigned an employee in accordance with ELM 546.

During our discussion, it was mutually agreed that the following would represent a full settlement of this case:

1. No former full-time regular shall be reemployed as an unassigned regular where a residual vacancy exists and the employee's physical condition would not prohibit the employee from fulfilling the duties of the residual vacancy in question.
2. A former full-time regular employee reemployed under 546.212 of the Employee and Labor Relations manual as an unassigned regular shall be placed into the first residual vacancy that the employee is physically capable of performing, unless that employee is deemed the successful bidder for another position.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.

Sincerely,


Thomas J. Tang
Labor Relations Department


Kenneth D. Wilson
Assistant Director



UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

JUL 17 1985

Mr. Robert Tunstall
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

ARTICLE	37
SECTION	3E 7
SUBJECT	<i>Bellevue</i>

Re: Local
Covina, CA 91722
H4C-5G-C 2

Dear Mr. Tunstall:

This supersedes my letter dated June 7, 1985.

On May 21, 1984, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The question in this grievance is whether management properly assigned an employee in accordance with ELM 546.

After further review of this matter, we agreed that no national interpretive issue is fairly presented in the particulars evidenced in this case. This case is remanded to determine whether management properly assigned the employee in accordance with Subchapter 546 of the Employee and Labor Relations Manual.


In resolving this matter, the parties are to be guided by the following:

1. No former full-time regular shall be reemployed as an unassigned regular where a residual vacancy exists and the employee's physical condition would not prohibit the employee from fulfilling the duties of the residual vacancy in question.
2. A former full-time regular employee reemployed under 546.212 of the Employee and Labor Relations Manual as an unassigned regular shall be placed into the first residual vacancy that the employee is physically capable of performing, unless that employee is deemed the successful bidder for another position.

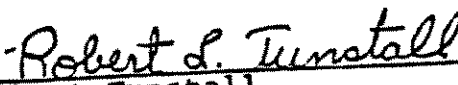
Mr. Robert Tunstall

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Sincerely,



Thomas J. Yang
Labor Relations Department



Robert Tunstall
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO



M-01010

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

October 26, 1979

Mr. Vincent R. Sombrotto, President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N. W.
Washington, D. C. 20001

Re: Grievance No. NS-NAT-001

Dear Mr. Sombrotto:

On July 24, 1979, and several subsequent occasions, we conducted pre-arbitration discussions relative to the above-captioned grievance.

Pursuant to these discussions, the Postal Service prepared, and forwarded to you, proposed new language for inclusion in Part 546.14 of the Employee and Labor Relations Manual. The proposed new language is as follows:

New Part 546.14, E&LR Manual

.14 DISABILITY PARTIALLY OVERCOME.

.141 Current Employees.

When an employee has partially overcome a compensable disability, the USPS must make every effort toward assigning the employee to limited duty consistent with the employee's medically defined work limitation tolerances (see 546.32). In assigning such limited duty the USPS should minimize any adverse or disruptive impact on the employee. The following considerations must be made in effecting such limited duty assignments:

- a. To the extent that there is adequate work available within the employee's work limitation tolerances within the employee's craft, in the work facility to which the employee is regularly assigned, and during the hours when the employee regularly works, that work shall constitute the limited duty to which the employee is assigned.

- b. If adequate duties are not available within the employee's work limitation tolerances in the craft and work facility to which the employee is regularly assigned, within the employee's regular hours of duty, other work may be assigned within that facility.
- c. If adequate work is not available at the facility within the employee's regular hours of duty, work outside the employee's regular schedule may be assigned as limited duty. However, all reasonable efforts shall be made to assign the employee to limited duty within the employee's craft and to keep the hours of limited duty as close as possible to the employee's regular schedule.
- d. An employee may be assigned limited duty outside of the work facility to which the employee is normally assigned only if there is not adequate work available within the employee's work limitation tolerances at the employee's facility. In such instances every effort will be made to assign the employee to work within the employee's craft, within the employee's regular schedule and as near as possible to the regular work facility to which normally assigned.

.142 When a former employee has partially recovered from a compensable injury or disability, the USPS must make every effort toward reemployment consistent with medically defined work limitation tolerances. Such an employee may be returned to any position for which qualified, including a lower grade position than that held when compensation began.

This language, to which you indicated you and other Unions with whom you discussed it are amenable, incorporates procedures relative to the assignment of employees to limited duty that you proposed. Subchapter 540 of the Employee and Labor Relations Manual was published on October 12, 1979, as a Special Postal Bulletin. It is the intent of the Postal Service to publish Part 546.14 with the language set forth in this letter, separately, after transmitting it to the Unions under Article XIX of the National Agreement. Part 546.14 subsequently will be published along with the rest of Subchapter 540 in the Employee and Labor Relations Manual.

With regard to individual grievances which arise in connection with implementation of these procedures, the parties agree that such grievances must be filed at Step 2 of the Grievance-Arbitration Procedure within five (5) days of the effective date of the limited duty assignment. The parties further agree that, if such a grievance remains unresolved through Step 3 of the Grievance-Arbitration Procedure, the grievance may be appealed to Expedited Arbitration under Article XV, Section 4 C, of the National Agreement.

In view of the foregoing, the issue raised by this grievance relative to the assignment of letter carriers who incur job related injuries is resolved as the Postal Service, in accordance with the assignment procedures set forth above, may assign letter carriers who have partially recovered from job related disabilities to limited duty assignments outside of their regular work schedules and/or their regularly assigned work facilities. The grievance can, therefore, be considered closed.

Sincerely,

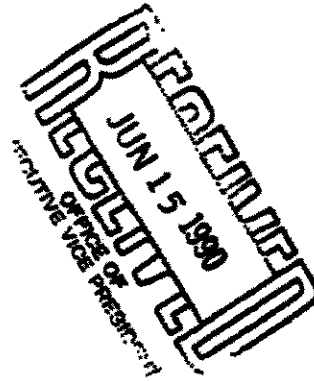
W. E. Henry, Jr.
for William E. Henry, Jr.
General Manager
Grievance Division
Labor Relations Department

Vincent E. Sombrotto
Vincent E. Sombrotto,
President
National Association of Letter
Carriers, AFL-CIO



UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20280-4100

June 11, 1990



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

Dear Bill:

This letter is in response to your April 18 correspondence requesting management's interpretation of the contract as it applies to the assignment of ill or injured employees when excessing occurs.

Management's interpretation of Article 12 of the contract is that, when excessing occurs in a craft, either within the installation or to another installation, the sole criteria for selecting the employees to be excessed is craft seniority. Whether or not a member of the affected craft is recovering from either an on- or off-the-job injury would have no bearing on his/her being excessed.

In the case of other craft employees who are temporarily assigned to the craft undergoing the excessing, they would have to be returned to their respective crafts. This is in accordance with the provisions of Article 13, Section 4.C. which reads:

" The reassignment of a full-time regular or part-time flexible employee to a temporary or permanent light duty or other assignment shall not be made to the detriment of any full-time regular on a scheduled assignment or give a reassigned part-time flexible preference over other part-time flexible employees."

If there are any questions concerning this matter, please contact Robert Ledoux of my staff at 268-3823.

Sincerely,

Joseph J. Mahon, Jr.
Assistant Postmaster General

545.9 Managing Extended Leave Cases**545.91 General**

An employee who suffers job-related injury or illness for which OWCP compensation is being received should be granted leave without pay because of injury on duty (LWOP/IOD) for an initial period of up to 1 year from the date OWCP compensation begins.

545.92 Deciding Appropriate Action

In considering the action to take in matters involving extended leave, the control office or control point evaluates the information contained in the employee's injury compensation file and does one of the following:

- a. Authorizes a fitness-for-duty examination as provided in 545.6.
- b. Extends LWOP/IOD for an additional period, at the end of which an additional determination must be made. If the employee is unable to return to work at the end of the 1-year period on LWOP/IOD, the LWOP/IOD may be extended for successive additional periods of up to 6 months. Extensions are granted only if it appears that the employee is likely to return to work within the period of the extension.
- c. If it is not likely that the employee will be able to return to work at the end of 1 year of LWOP/IOD or during the authorized extended period, the employee may be separated. Before any employee who is on the rolls of OWCP can be separated, the requesting official must submit a comprehensive report to the manager of Health and Resource Management at Headquarters through the area human resources analyst for injury compensation with appropriate recommendations and documentation. The employee must be retained on the rolls of the Postal Service pending approval from Headquarters.

545.93 Separation — Disability

After receiving permission from the Health and Resource Management manager at Headquarters, the requesting official initiates the separation action in accordance with 365.

546 Reassignment or Reemployment of Employees Injured on Duty**546.1 Law****546.11 General**

The Postal Service has legal responsibilities to employees with job-related disabilities under 5 U.S.C. 8151 and the Office of Personnel Management's (OPM) regulations as outlined below.

546.12

546.12 Disability Fully Overcome Within One Year**546.121 Obligation**

A current or former career employee who fully recovers from an injury or disability within 1 year of initial or recurrent compensation must be given the right to resume employment in the former or equivalent position.

546.122 Rights and Benefits

Upon reemployment, all rights and benefits that would have been acquired in the former position must be restored.

546.13 Disability Fully Overcome After More Than One Year**546.131 Obligation**

When a current or former employee fully overcomes the injury or disability more than 1 year after compensation begins, the Postal Service must give the current or former employee priority consideration for reassignment or reemployment into the former position or an equivalent one. The names of all former employees who fully recover from their compensable disabilities more than 1 year after compensation begins must be entered on a reemployment list in two groups:

- a. Group one includes all those former employees who are entitled to 10-point veteran preference. They must be considered for employment before persons in group two.
- b. Group two includes all other former employees who fully recover from their compensable disabilities in more than 1 year. They must be considered before other sources of recruitment, such as transfers from other agencies, reinstatements, or appointments from hiring registers.

546.132 Rights and Benefits

Rights and benefits are the same as those outlined in 546.122.

546.14 Disability Partially Overcome**546.141 General**

The procedures for current employees cover both limited duty and rehabilitation assignments. Limited duty assignments are provided to employees during the recovery process when the effects of the injury are considered temporary. A rehabilitation assignment is provided when the effects of the injury are considered permanent and/or the employee has reached maximum medical improvement.

546.142 Obligation

When an employee has partially overcome the injury or disability, the Postal Service has the following obligation:

- a. *Current Employees.* When an employee has partially overcome a compensable disability, the Postal Service must make every effort toward assigning the employee to limited duty consistent with the employee's medically defined work limitation tolerance (see 546.611). In assigning such limited duty, the Postal Service should minimize any adverse or disruptive impact on the employee. The following

considerations must be made in effecting such limited duty assignments:

- (1) To the extent that there is adequate work available within the employee's work limitation tolerances, within the employee's craft, in the work facility to which the employee is regularly assigned, and during the hours when the employee regularly works, that work constitutes the limited duty to which the employee is assigned.
- (2) If adequate duties are not available within the employee's work limitation tolerances in the craft and work facility to which the employee is regularly assigned within the employee's regular hours of duty, other work may be assigned within that facility.
- (3) If adequate work is not available at the facility within the employee's regular hours of duty, work outside the employee's regular schedule may be assigned as limited duty. However, all reasonable efforts must be made to assign the employee to limited duty within the employee's craft and to keep the hours of limited duty as close as possible to the employee's regular schedule.
- (4) An employee may be assigned limited duty outside of the work facility to which the employee is normally assigned only if there is not adequate work available within the employee's work limitation tolerances at the employee's facility. In such instances, every effort must be made to assign the employee to work within the employee's craft within the employee's regular schedule and as near as possible to the regular work facility to which the employee is normally assigned.

- b. *Former Employees.* When a former employee has partially recovered from a compensable injury or disability, the Postal Service must make every effort toward reemployment consistent with medically defined work limitation tolerances. Such an employee may be returned to any position for which he or she is qualified, including a lower grade position than that which the employee held when compensation began.

Note: Placement priority for rehabilitation assignment is the same as for limited duty.

546.143 Rights and Benefits Upon Partial Recovery

When a current or former employee has partially overcome the injury or disability, he or she has the following rights and benefits upon reassignment or reemployment:

- a. *Seniority.* Former employees who are reemployed into bargaining unit positions or current career employees who are reassigned into such positions are credited with seniority in accordance with the collective bargaining agreements covering the position to which they are assigned.

- b. *Probationary Period.* Reemployed individuals who have completed their probationary periods, or would have completed their probationary periods but for their compensable injuries, are not required to serve a new probationary period.
- c. *Leave Credit.* For purposes of computing leave rate accrual, former employees who were eligible to accrue leave under 510 are credited upon reemployment with the total time compensation was received from OWCP.
- d. *Retirement.* Former employees (not reemployed annuitants) who were covered by the Civil Service Retirement Act (see 560) or Federal Employees Retirement System (see 580) are credited with the time spent on OWCP compensation in computing retirement credit. Annuitants who are reemployed after a period of separation during which they received OWCP benefits in lieu of an annuity receive credit for the separation only after they have qualified for a redetermination of the annuity. (For additional information on retirement considerations see the federal *CSRS/FERS Handbook*, Chapter 102.)
- e. *Salary Determination.* The following salary restoration criteria must be met for both reemployment and reassignment actions:
 - (1) *Reassignment or Reemployment to the Former Grade or Step in the Same Salary Schedule.* Those individuals who are reemployed into a position with the same grade or step as held at the time of injury or disability receive the current salary for that grade and the step that they would have acquired if there had been no injury or disability.
 - (2) *Reassignment or Reemployment to a Higher Grade Step in the Same Salary Schedule.* Those individuals who are reemployed to a position with a grade higher than that of the position held at the time of injury or disability are placed in the higher grade at the current salary for the grade or step that they would have acquired if there had been no injury or disability. If that salary is between steps in the higher grade, their salary is increased to the next higher step.
 - (3) *Reassignment or Reemployment to a Lower Grade or Step in the Same Salary Schedule:*
 - (a) *Salary Below Maximum of Lower Grade.* The individual is placed in any higher step in the lower grade that is less than one full step above the current salary for the grade or step that he or she would have acquired if there had been no injury or disability.
 - (b) *Salary Above Maximum of Lower Grade.* In those cases where the current salary for the grade that the individual would have acquired if there had been no injury or disability exceeds the maximum salary of the lower grade position, he or she is afforded a saved rate at the higher grade or step salary. These saved-rate provisions apply for an

- indefinite period and are subject to the rules of the salary schedule to which assigned for the following employees:
- (i) Current career employees who have accepted a permanent rehabilitation job offer and are reassigned to a lower grade due to a job-related injury.
 - (ii) Former career employees who are being reemployed under 546.142b.
 - (iii) Limited duty career employees.
- (4) *Reassignment or Reemployment to a Position in a Different Salary Schedule.* When an individual is reemployed or reassigned to a position in a salary schedule that is different from the schedule under which he or she was paid at the time of injury or disability, he or she is treated under the rules applicable to the salary schedule to which reemployed or reassigned:
- (a) The individual is reemployed or reassigned at the grade appropriate for the position to which reemployed or reassigned.
 - (b) The individual is placed in any higher step in the new grade that is less than one full step above the current salary for the grade or step that he or she would have acquired if there had been no injury or disability.
 - (c) If reemployment or reassignment is in a nonstep schedule, the individual is placed at a salary plus any salary increases the he or she would have acquired if there had been no injury or disability. Bargaining unit merit salary increases are based on the most recent performance rating prior to the injury or disability.
 - (d) If the current salary for the grade that the individual would have acquired if there had been no injury or disability exceeds the maximum salary of the new grade, he or she is given a saved rate. These saved-rate provisions apply for an indefinite period and are subject to the rules of the salary schedule to which assigned.
- (5) *Reassignment or Reemployment to a Former Position Under Different Salary Schedule.* If the position held at the time of injury or disability is no longer under the same salary schedule, the current salary for the former grade or step is determined by:
- (a) The manager of Corporate Personnel Management for Headquarters and Headquarters field unit positions.
 - (b) The area Human Resources manager for area positions.
 - (c) The district Human Resources manager for other field positions.
- (6) *Step Increases.* Upon reemployment or reassignment, the partially recovered and permanently partially disabled individuals are assigned a new waiting period for step or merit increases. The date assigned is based on the effective date for the most

546.144

Employee Benefits
Injury Compensation Program

recent step, merit, or equivalent increase the individual would have acquired if there had been no injury or disability.

546.144 Relocation Consideration

Factors considered when relocation of a former employee is proposed include the following:

- a. *Scope.* Every effort must be made to reemploy the individual at a postal facility within the area of his or her present place of residence. Any offer to reemploy in a different location can be considered only after all reasonable attempts have been made to rehire within the area of the employee's present place of residence.
- b. *Expenses.* If an individual accepts a reemployment offer but will incur relocation expenses as a result of this acceptance, any expenses that OWCP determines reasonable and necessary may be paid by OWCP from the Employees' Compensation Fund.

546.2 Collective Bargaining Agreements**546.21 Compliance**

Reassignment or reemployment under this section must be in compliance with applicable collective bargaining agreements. Individuals so reassigned or reemployed must receive all appropriate rights and protection under the newly applicable collective bargaining agreement.

546.22 Contractual Considerations**546.221 Scope**

Collective bargaining agreement provisions for filling job vacancies and giving promotions and provisions relating to retreat rights due to reassignment must be complied with before an offer of reassignment or reemployment is made to a current or former postal employee on OWCP rolls for more than 1 year.

546.222 Reassignment or Reemployment

A partially recovered current or former employee reassigned or reemployed to a different craft to provide appropriate work must be assigned to accommodate the employee's job-related medical restrictions. Such assignment may be to a residual vacancy or to a position uniquely created to fit those restrictions; however, such assignment must not impair seniority rights of PTF employees. Minimum qualification requirements, including written examinations, may be waived in individual cases for former or current employees injured on duty and being considered for reemployment or reassignment. When there is evidence (including that submitted by the postal physician or occupational health nurse administrator) that the employee can be expected to perform satisfactorily in the position within 90 days after assignment, a waiver may be granted by one of the following:

- a. The vice president of Employee Resource Management for Headquarters and Headquarters field unit positions.
- b. An area Human Resources manager for area positions.
- c. A district Human Resources manager for other field positions.

In turn, the finance office will send the refund and a copy of Form 202 to the employee.

- Ensure that the injured employee has continuation of enrollment for health benefits.

4.25 Initiating Health Benefits Refund — ICCO or designated control point personnel

- To ensure that an eligible employee receives his or her health benefit refund:
 - Initiate Form 202, *Health Benefits Refund Payment Authorization*, on a quarterly basis.
 - In calculating the amount of the refund to be paid, subtract the difference between the OPM health benefits premium rate and the Postal Service rate of the health benefits plan chosen by the employee.
 - Obtain approval of the facility manager or designee.
 - Submit two copies of the refund authorization to the finance office for payment using AIC 587, *Fees for Service — Postal Operations*.
 - File the original Form 202 in the employee's injury compensation file and one copy in the OPF.

The finance office will forward the refund and one copy of the Form 202 to the employee and retain one copy for its records.

Reassignment and Reemployment

When a current employee is to be reassigned or a former employee reemployed...

4.26 Considering a Former or Current Employee for Reemployment — ICCO

Obligation: Ensuring Reemployment or Reassignment of Employees Injured on Duty

Disability Fully Overcome Within 1 Year

When an employee fully overcomes the injury or disability within 1 year after the commencement of compensation payments from OWCP, or after compensable disability recurs, the USPS must give an employee the right to resume employment in the former or an equivalent position.

Disability Fully Overcome After More Than 1 Year

When a current or former employee fully overcomes the injury or disability more than 1 year after compensation begins, the USPS must give the current or former employee priority consideration for reemployment or reassignment into the former position or an equivalent one.

Disability Partially Overcome

- *Current Employee:* When an employee has partially overcome a compensable disability, the USPS must make every effort toward assigning

the employee to limited duty consistent with the employee's medically defined work limitation tolerance. In assigning such limited duty, the USPS should minimize any adverse or disruptive impact on the employee.

- *Former Employee:* When a former employee has partially recovered from a compensable injury or disability, the USPS must make every effort toward reemployment consistent with medically defined work limitation tolerances. Such an employee may be returned to any position for which he or she is qualified, including a lower grade position than that which the employee held when compensation began.

- When an injured employee or former employee is being considered for reassignment or reemployment, ensure that postal obligations are met.

To ensure priority consideration of former employees who fully recover from their compensable disabilities more than 1 year after the start of compensation, enter their names on an employment list in two groups.

- **Groups 1:** All those entitled to 10-point veteran preference. They must be considered for employment before persons in Group 2.
- **Groups 2:** All other former employees. These former employees must be considered before other sources of recruitment, such as transfers from other agencies, reinstatements, or appointments from hiring registers.
- **Current Employees.** When an employee has partially overcome a compensable disability, the USPS must make every effort toward assigning the employee to limited duty consistent with the employee's medically defined work limitation tolerance (see 546.611). In assigning such limited duty, the USPS should minimize any adverse or disruptive impact on the employee.

SEE Chapter 11, Rehabilitation Program.

4.27 Ensuring Recognition of Appeal Rights — ICCO

Obligation: Ensuring Notification of Restoration Appeal Rights

OPM Appeal Rights

- **Disability Fully Overcome Within 1 Year**

An employee who has fully overcome the injury or disability within 1 year after the commencement of compensation payments from OWCP may appeal to the Merit Systems Protection Board (MSPB) if he or she believes a proposed offer of reemployment does not meet the requirements of restoration as outlined in the OPM regulations. The letter of appeal must be submitted within 30 days after the date of the offer or 30 days after the date of reemployment, whichever is later. (5 CFR 353.301)

Exhibit 11.7b
Rehabilitation Assignment Priority

Whenever possible, assign qualified employees to rehabilitation job assignments duty in *their regular craft, during regular tour of duty, and in their regular work facility.*

Prioritize the rehabilitation job assignment in the following manner:

- To the extent that there is adequate work available within the employee's work limitation tolerances, within the employee's craft, in the work facility to which the employee is regularly assigned, and during the hours when the employee regularly works, that work constitutes the rehabilitation job assignment to which the employee is assigned.
- If adequate duties are not available within the employee's work limitation tolerances in the craft and work facility to which the employee is regularly assigned within the employee's regular hours of duty, other work may be assigned within that facility.
- If adequate work is not available at the facility within the employee's regular hours of duty, work outside the employee's regular schedule may be assigned as rehabilitation. However, all reasonable efforts must be made to assign the employee to a rehabilitation job assignment within the employee's craft and to keep the hours of the rehabilitation job assignment as close as possible to the employee's regular schedule.
- An employee may be assigned rehabilitation outside of the work facility to which the employee is normally assigned only if there is not adequate work available within the employee's work limitation tolerances at the employee's facility. In such instances, every effort must be made to assign the employee to work within the employee's craft within the employee's regular schedule and as near as possible to the regular work facility to which the employee is normally assigned.

If it is necessary to change any of the elements to meet the employee's physical limitations or to provide the employee with suitable work, the elements must be changed in this specific order:

Priority of Choice	Regular Craft	Regular Tour	Regular Facility
1st	Within	Within	Within
2nd	Outside	Within	Within
3rd	Within	Outside	Within
4th	Outside	Outside	Within
5th	Within	Within	Outside
6th	Outside	Within	Outside
7th	Within	Outside	Outside
8th	Outside	Outside	Outside

Exhibit 11.9b

Pre-reemployment or Reassignment Employee Interview Checklist

1. Explain the specific duties required of the position that is being offered under the Rehabilitation Program.
2. Explain the physical requirements demanded of the position. (If applicable, advise employee that the job description was reviewed by a physician (name the physician) who determined that the proposed duties were in compliance with the employee's work restrictions.)
3. Inform employee of the location of the work facility and work schedule being assigned.
4. Explain fully all restoration rights, responsibilities, and benefits upon reemployment:
 - *Employee status seniority.* These are based upon provision of the applicable U.S. Postal Service collective bargaining agreements covering the position to which the employee is being assigned.
 - *Probation period.* Reemployed individuals who have completed their probationary periods, or individuals who would have completed their probationary periods but for their compensable injuries, are not required to serve a new probationary period.
 - *Leave credit.* Total time on Office of Workers' Compensation (OWCP) rolls will be creditable for computing leave rate accrual.
 - *Salary determination.* This is based upon the position to which the individual is reemployed/reassigned.
 - *Retirement:*
 - A separated (nonretired) employee who returns to work, either part time or full time, receives full credit for time spent on FECA rolls, but his or her family may be left without survivor's benefits in event of death.
 - An employee who has applied for and been approved for retirement, even if he or she receives Federal Employees' Compensation Act (FECA) benefits and never receives disability annuity, will not always receive credit for time spent on FECA rolls when returning to work. In this case, future retirement benefits are determined in accordance with 5 U.S.C. 8344(a).
 - *Bid rights.* Reemployed/reassigned individuals may bid on other positions provided they meet the physical requirements of the job. If a Rehabilitation Program employee is a successful bidder on another position, the employee will no longer be a Rehabilitation Program participant unless the employee's work restrictions continue.

INJURY COMPENSATION

- *Medical Treatment.* The individual is entitled to continued medical treatment, if needed, as a result of the injury.
 - *Disability Retirement.* The individual is entitled to apply for these benefits if, after returning to work, he or she is medically determined to be permanently disabled from performing any type of work.
5. Inform the employee of the time required for receipt of acceptance or declination of job offer before follow-up action is initiated (usually 2 weeks).
 6. Inform the employee that refusal of a valid job offer may result in termination or reduction of OWCP benefits.
 7. Document the date the pre-reemployment/reassignment interview was held and other pertinent information relating to the interview.

72 Bargaining Positions

721 **Filling Positions**

The filling of bargaining positions through assignment, reassignment, or promotion is subject to the provisions of the appropriate collective bargaining agreements. Except for provisions in the agreements covering excess and ill or injured employees, vacancies must be filled by promotion or reassignment within the appropriate craft and installation, if qualified bidders or applicants are available (see 212.13, Promotion to Entrance Level Positions).

722 **Conversion to Full-Time Status**

A *full-time residual position* is filled by assigning an unassigned full-time employee or a full-time flexible employee. The conversion to full-time of a qualified *part-time* flexible employee with the same designation or occupation code as the vacancy should occur only after unassigned full-time employees have been assigned. Part-time flexible employees must be changed to full-time regular positions, if appropriate, within the installation in the order specified by the applicable collective bargaining agreement.

723 **Area of Consideration**

The area of consideration is described in the appropriate collective bargaining agreement. If necessary, the area may be expanded to eligible employees in other crafts at the same installation, and then to eligible employees at other installations.

724 **Position Requirements**

Requirements for individual duty assignments are indicated in qualification standards, vacancy announcements, or job postings. These requirements pertain to assignment, reassignment, or promotion. A vacancy announcement or job posting may indicate requirements in addition to those in the applicable qualification standard. These additional requirements include special requirements or typing and/or driving requirements that may be added (see 725.2, Appropriate Special Requirements, and 763.22, Local Options for Typing and Driving Requirements). Qualification standards are available for most bargaining positions on Bqnet, *Bargaining Qualifications on the Net*. When a qualification standard exists for a specific bargaining position, its provisions must be followed. (See 727.2, No Qualification Standards, when a qualification standard is not available for a position.)

725 **Special Requirements**

725.1 **Identification, Justification, and Documentation**

Special requirements must be related to the job, and must be justified to show that the particular requirement will enable applicants to perform critical job duties that they would otherwise be unable to do satisfactorily. Sufficient

assured of return to their regular positions when no longer needed in the temporary assignments, whether or not the expected period has ended. To avoid any misunderstanding at a later date, the following statement should be obtained from any employee selected for temporary promotion:

I understand that my selection for the position of (position title) is temporary and that I will be returned to my present permanent position upon termination of the temporary promotion.

717 Positions Filled Permanently

717.1 Reassignment

Reassignment is the permanent assignment with or without relocation of an employee to another established position with the same level in the same salary schedule, or to a position with an equivalent level in another salary schedule. The following policies apply to reassignment:

- a. *Reassignment to Bargaining Positions.* General policies and procedures governing reassignments to bargaining positions are contained in the appropriate collective bargaining agreement. (See 72, Bargaining Positions, and 76, Bargaining Position Qualification Standards, for detailed policies and procedures.)
- b. *Reassignment to Nonbargaining Positions.* Management may reassign nonbargaining employees noncompetitively. Employees with saved grade are considered noncompetitively for positions up to the level of their former position or at any intervening level. Employees who desire reassignment may apply in the same way as employees who desire promotion consideration.
- c. *Mutual Exchanges.* Career bargaining employees may exchange positions at the same level if the exchange is approved by management at the installations involved, subject to the provisions of the applicable collective bargaining agreement. An exchange of positions does not necessarily mean that the employees involved take over the duty assignments of the positions.

Exclusions: Part-time flexible employees may not exchange positions with full-time employees, or bargaining employees with nonbargaining employees, or nonsupervisory employees with supervisory employees.

717.2 Unassigned Employees

Employees whose positions have been abolished are assigned in accordance with ELM 354, Assignment of Unassigned Employees.

717.3 Promotion

A *promotion* is the permanent assignment with or without relocation of an employee to an established position with a higher level than the employee's previous position, or to an established position with a higher than equivalent level in another schedule (see ELM 413, Promotion to Nonbargaining Positions). Restrictions on the promotion, or recommendation for promotion,

Limited Duty Carrier Assignments

Sort letter/flat mail in modified workstation/remains seated
Sort letter/flat mail
Write/Type PS Form 3982
File change of address cards

Growth management
Maintain routine route records
Maintain special order route records

Make carrier route case labels
Maintain Address Management books for carrier routes
Maintain Unit Goal posters
Update USPS employee bulletin boards
Record DPS errors received from carriers after return from street
Carrier information gathering for Unit Review
Coordinate USPS/carrier special events
NDCBU Street delivery of mail (Cluster Box)
High rise apartment delivery of mail
Truck mounted mail delivery
Complete Form 1564A for carrier routes
Maintain route maps for carrier routes
Maintain Form 3575 for carrier routes
Maintain Form 1621 for carrier routes
Sort mail to be forwarded into throw-back case for handling by clerks
Make deliveries on carrier routes

Limited Duty Mail Handler Assignments

Separate bundles of mail
Complete and attach labels on bundles according to content
Condemn mail bags
Remove cord fasteners and label holders
Prepare salvaged articles
Work at wire tying machines
Prepare facing slips
Sort trays, pouches and bags to appropriate distribution point
Label printing
Operate a jitney, fork-lift or pallet truck

GRIEVANCE DOCUMENTATION OVERVIEW

The primary argument in limited duty /reassignment violation cases is contained in Section 546 of the ELM and the EL-505, Chapters 7 or 11 (whichever is applicable).

The language in the ELM, (Section 546.142.a) states, " The following considerations must be made in effecting such limited duty assignments."

The language in the EL-505 states, "If it is necessary to change any of the elements to meet the employee's physical limitations or to provide the employee with suitable work, the elements must be changed in this specific order."

The must considerations and must order referenced above in the ELM and EL-505 are as follows:

<u>Priority of Choice</u>	<u>Regular Craft</u>	<u>Regular Tour</u>	<u>Regular Facility</u>
1 st	Within	Within	Within
2 nd	Outside	Within	Within
3 rd	Within	Outside	Within
4 th	Outside	Outside	Within
5 th	Within	Within	Outside
6 th	Outside	Within	Outside
7 th	Within	Outside	Outside
8 th	Outside	Outside	Outside

Section 546.2 of the ELM and EL-312 require the Postal Service to be in compliance with the provisions of the applicable collective bargaining agreements.

Contractual Provision

Article 15 If it is a ongoing violation each case should be filed stating, "this is a continuing violation", however the Local union needs to keep requesting supporting documentation as limited duty assignment could change.

Article 19: ELM, Section 546
EL-505, Chapter 7 (temporary assignment)
EL-505, Chapter 1 (permanent assignment/max med. improve.)
EL-505, Chapter 12 (records and privacy act, if applicable)
EL-312, Section 716 (if reassignment is temporary)
EL-717, Section 717 (if reassignment is permanent)
ASM, Section 352 (Union request for information)
ASM Appendix 120.090 (information disclosure, if applicable)
EL-860, Chapter (Union review of medical record, if applicable)

Article 13 (if voluntarily requested by the employee and "other assignment")

Article 37 (Only if the reassignment violated the Craft Article)

Article 30 (Only if the reassignment violates the LMOU-Items 15, 16, 17)

Article 5 (It could be a unilateral action if the Postal Service has a policy of reassigning injured employees in the Clerk Craft without reviewing medical limitation tolerances on an individual basis.)

Article 7 (If after review it is determined that the employee does not have a compensable disability and/or it is strictly a crossing craft grievance and different wage level argument)

Article 12 Burrus 6/1 1/90 Step 4 (Excessing/limited duty/Item 18 of LMOU)

Article 8 (If we prove our case, overtime at the appropriate rate for all hours worked by the employee will be requested for clerks on OTDL)

Remedy

Request overtime for all clerks on the OTDL for all hours worked by the employee and to make the Clerk Craft whole. Additional remedies could include posting a job, conversion of a part-time flexible clerk, filling job vacancies and etc. These remedies are based on a case specific fact circumstances.

Documents to Request/Relevancy

Whenever the term "employee" is referenced in this section, it represents any employee working in the Clerk Craft from another Craft, in violation of the Collective Bargaining Agreement. Each employee violation is "case specific" since each will have different medical limitations

- Interview clerks in the facility (work area), the injured employee and his/her immediate supervisor. The interview is for the purpose of determining what clerk work is being performed and the amount of time used. Get statements, if possible.
- Request the current Form 50 for any employees working in the Clerk Craft that are not clerks.
- Request a copy of the employee's CA-1, CA-2 or CA-2a (whichever is applicable)
- Request a copy of the employee's current CA-17 and all CA-17's from the date of the filing CA-1 or CA-2 or CA-2a to present.

- Request a copy of the employee's voluntary request for light or limited duty in accordance with Article 13 (if applicable)

- Request a copy of the employee's current bid job award (if encumbered) or last bid award (if unencumbered)

- Request a copy of the employee's current temporary limited duty assignment (if assigned under Chapter 7 of the EL-505)

- Request a copy of the LMOU of the Craft representing the employee and the APWU local LMOU (to ascertain if Item 15, 16, 17 identifies light/limited duty assignments in their own craft and consultations)

- Request a copy of the PS Form 30 Operations Analysis (provides an overview for hours usage for all LDC's in facility). Your office may have replaced this form with the Flash Report.

- Request a copy of the Flash Report (if office doesn't use PS Form 30)

- Request a copy of the employee listing for the installation by Craft.

- Copy of the Clerk Craft OTDL for the facility (in accordance with Item 14 of the LMOU)

For letter carrier violations, request these additional documents

- Request a copy of DIOS (Delivery Operations Information System)

- E-Flash (Tracks mail volume)

- Copy of the employee's craft OTDL (Totals for the entire quarter, as the letter carrier craft use equalization of hours under article 8)

- AMES Carrier Delivery Statistics Report by Delivery Zip (This report shows the type of deliveries for the routes in the facility. Curbside, central, NDCBU and other deliveries can be made by most limited duty employees.

- Review the Class Route Summary in Red Edit Book for each letter carrier route in the facility

- Review 3996--Carrier Auxiliary Assistance (Select a review of a Monday delivery to ascertain which routes need assistance.

- Request a copy of Analysis of Late Leaving (From Form 1813 or PSDS Printout) for facility. This report will show the carriers in need of office help, of which most limited duty carriers can perform.

- Review Form 3999-Inspection of Letter Carrier Route for routes in the facility. (This report will show how much time is allowed for different segments of each route. Ex.-curbside boxes might be 2 hours)

Most of the documents, once requested will not have to be requested again, in subsequent grievances or in grievances involving other employees in the same facility. You only need to request general documents in one grievance and just make copies to place in other grievances