

(REGULAR OR EXPEDITED) ARBITRATION PANEL

C#11252

In the Matter of the Arbitration } GRIEVANT: Jeffery Hakanson
between }
UNITED STATES POSTAL SERVICE } POST OFFICE: Warwick, R.I.
and }
NATIONAL ASSOCIATION OF LETTER } MANAGEMENT CASE NO. N7N-IF-C 33228
CARRIERS AFL-CIO }
UNION CASE NO. 090690 J.H.
GTS #7242

BEFORE: Harry B. Purcell

ARBITRATOR:

APPEARANCES:

For the U. S. Postal Service: Thomas F. Boutier
Labor Relations Representative

For the Union: Carl Soderstrom
Trustee/Advocate

Place of Hearing: Providence, R. I. (USPO)

Date of Hearing: May 30, 1001

AWARD:

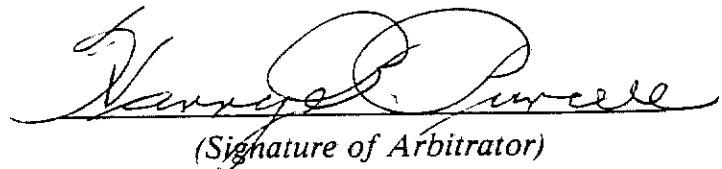
(SEE ATTACHED AWARD)

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OCT 9 1991

NALC-NEW ENGLAND REGION

Date of Award: Oct 5, 1991


(Signature of Arbitrator)

AWARD

The Employer's procedural performance in disposing of the question of, whether or not the Grievant was entitled to re-assignment to the letter carrier craft, was sufficiently flawed so as to constitute a violation of the contract. The remedy hereby ordered is that:

- A. The Grievant shall be promptly reassigned to the Carrier craft in the classification of "Router", provided that such classification is still existent; and,
- B. The Grievant shall be allowed to displace any employee in the "Router" classification who has less seniority in the Carrier craft than the Grievant had accumulated as of the date the Grievant was transferred to the Clerk craft; and,
- C. The Grievant's seniority in the Carrier craft shall be computed on the basis of the total of what he had credited to him at the time he was transferred to the Clerk craft, plus, the time that has elapsed from the date that a "Router" was assigned pursuant to the March 1991 "Router" job posting - to the date the Grievant is reassigned to the Carrier craft in accordance with this Award; and,
- D. The Grievant shall be compensated for any lost wages that resulted from his not having been the one selected to fill the "Router" position. Such back wages lost, if any, shall be calculated from the date the "Router" job was first filled to the date the Grievant is assigned to it in accordance with this Award; and,
- E. The back wages referred to in Item (D) above shall have added to it such "out of schedule" pay as would be called for, if any, according to the particular schedules of work hours here involved; and,
- F. Since the Arbitrator has not been provided with the precise record of their work schedules that might be necessary for him to issue a more definitive Award with respect to Items (D) and (E) above, the appropriate representatives of the Parties are ordered to promptly meet for the purpose of resolving any pertinent questions. In the event that the Parties are unable to reach a mutually satisfactory resolution of the back wages aspect, and only that aspect, may be referred to arbitration by either Party. In that connection, the Parties are to understand that this Arbitrator is not necessarily retaining jurisdiction in the matter and that they are free to refer the disagreement to any arbitrator that they mutually select.

ARBITRATION PROCEEDING

REGULAR REGIONAL ARBITRATION PANEL

IN THE MATTER OF ARBITRATION)
- Between -)
UNITED STATES POSTAL SERVICE)
- And -)
NATIONAL ASSOCIATION OF LETTER CARRIERS,)
AFL-CIO)
USPS CASE NO.: N7N-IF-C 33228)
NALC CASE NO.: 090690 JH) AWARD
POSTAL FACILITY: Warwick, R.I.) OF THE
GRIEVANT: Jeffery Hakanson) ARBITRATOR
HEARING LOCATION: Providence, R.I.)
HEARING DATE: May 30, 1991)
AWARD DATE: October 5, 1991)
ARBITRATOR: Harry B. Purcell)

FOREWORD

The Parties to this Arbitration Proceeding are the United States Postal Service (hereinafter referred to as "Employer") and the National Association of Letter Carriers AFL-CIO (hereinafter referred to as "Union"). A hearing was conducted in this matter at the U.S. Post Office, located at 24 Corliss Street, Providence, R.I., at 10:00 a.m., on May 30, 1991 and was completed at approximately 12:15 a.m., on that same day. The Proceeding was not recorded by a court reporter. The Parties were given full opportunity to present all of the testimony, evidence and proofs that they wished to offer in support of their respective Positions. The Arbitrator is satisfied that all conditions essential to a full and proper hearing and disposition of the matter placed before him have been met.

REPRESENTATIVES OF THE PARTIES

Appearing For The Employer
Thomas F. Boutier
Labor Relations Representative

Appearing For The Union

Carl Soderstrom
Trustee/Advocate

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THE ISSUE BEFORE THE ARBITRATOR

The Parties submitted different, but somewhat similar, versions as to how the language of the Issue should be framed. Under his responsibility and authority, the Arbitrator deems the Issue is:

"Was the Employer's procedural performance in disposing of the question of, whether or not the Grievant was entitled to reassignment to the letter carrier craft, sufficiently flawed so as to constitute a violation of the contract? If so, what shall be the remedy?"

BACKGROUND OF THE DISPUTE

Jeffery Hakanson (hereinafter referred to as "Grievant") was a full-time letter carrier at the Warwick, R.I. post office. His credited length of service as of this writing is approximately 7.15 years all of which was accumulated in the letter carrier craft until on, or about, October 18, 1990 i.e., about 6 1/6 years, at which time the Grievant was still employed in his letter carrier craft but in a "limited duty" status and under the Workmen's compensation Program as the result of an on the job injury to the knee area of his right leg, which happened in May, 1989 as he stepped off a low platform (8 inches in height) at his postal work location. As indicated above, the Grievant continued in the letter carrier craft with changed duties and without causing any labor relations problem to occur. In October 1990, however, the Employer was prompted to decide that it no longer served efficiency from its managerial standpoint, to continue that particular utilization of the Grievant's limited capabilities, and that the only practical solution was to be found in a transferring of the Grievant to similarly "limited duties" in the Clerk craft. The record indicates that such a transfer/reassignment would not lower the Grievant's wage rate or classification level but would significantly alter his hours of work schedule so as to seriously inconvenience his domestic circumstances including the ability of his wife to maintain her schedule of work hours and child caring obligations. So it happened that on October 18, 1990 the Grievant was presented for his signing, the workers compensation form NRC 208-A2-4 (EMPLOYER'S EXHIBIT NO. 1) which is a form letter in which the subject employee is required to check either the: "I accept the [proposed job change] position offer" box, or, the: "I reject the position offer" box. The Grievant checked the "I accept" box but added a demurrer as follows:

"I accept the level and step change as stated. I must say for the record that I had to accept this position under duress for as stated by Mr. Ulinick [Ulinick] that a loss of benefits and or position in the Postal Service may be jeopardized [jeopardized]."

By date of September 6, 1990, the Union formally grieved the Grievant's transfer to the Clerk craft but the dispute failed of resolution in the grievance meetings subsequently held concerning it and thus was referred to this Arbitration Proceeding.

ASSERTED APPLICABLE CONTRACT AND/OR REGULATIONS PROVISIONS

(SEE ATTACHED APPENDICES)

POSITION OF THE PARTIES

POSITION OF THE UNION

The Union vigorously argues that the Employer has violated both the contract as well as its own regulations in this matter. In addition, it contends that the arbitration award of Elliott H. Goldstein (USPS v. NALC, C8N-4J-C 12091, June 29, 1981, Chicago, Ill.) has direct application to the subject circumstances and it calls for the grievance here presented to be sustained, and disposed of, according to, and under the res judicata principle i.e., a dispute "settled by competent judgment". Following his on the job injury the Grievant performed a variety of Carrier craft duties within his capabilities for about a year. It wasn't until the Grievant filed for a different work schedule that the Employer decided to require the Grievant to present himself for "fitness for duty" physical examination. That examination only confirmed the Grievant's limited duty status which was well known. Nevertheless, the Employer suddenly decided that, for operational efficiency reasons, the Grievant could not continue in the Carrier craft and so proffered to him a modified clerical position in the Clerk craft. As the record clearly shows, the Grievant accepted that transfer but only after his written protest and under the threat that his failure to accept would cause him to be liable to loss of compensation benefits, not excluding loss of employment.

The Union submits that the impropriety of the Employer's performance here is also attested to by the arbitration award of Neil N. Bernstein at the national level (Case No. HIN-IJ-C 23247-August 7, 1987 - New Haven, Ct.) which case involved the same basic questions as here, to wit:

"Whether management may permanently transfer an employee who sustained an injury on duty and who is performing limited duty to another craft on an involuntary basis?"

In finding that the U. S. P.S. did violate the contract/regulations in that (New Haven) case Arbitrator Bernstein observed in his conclusions (page 10) that: "National decisions [as his Award represented] bind the regional arbitrations, and not the reverse."

The Union here particularly questions the good faith performance of the Employer by its failure to comply with assignment/reassignment provisions of Article 13, Section 4 which mandates the exhausting of "every effort" and "all efforts" with respect to moving an employee to "another craft or occupational group" within the same installation. Finally, the Union challenges the legitimacy of the Employer's rejection of the Grievant's bid for a return to a Carrier craft position on the sole grounds that his being in the Clerk craft disqualified his bid.

The Union asks that the grievance be sustained and that, as remedy, the Grievant be immediately returned to the Carrier craft and that he be made whole for all monetary losses he suffered as a result of his being transferred to the Clerk craft on, or about October 18, 1990 from the Carrier craft.

POSITION OF THE EMPLOYER

The Arbitrator is obliged to summarize the Employer's Position here more briefly since it required no lengthy presentation at the arbitration hearing. Essentially, the Employer's case is founded on several main propositions. In the first place it underscores the point that there should be no question but that it has the right to reassign an employee, such as the Grievant, who had/has a compensable injury, from one craft to another. It calls attention to the fact that that right has been affirmed by several arbitrators, including the Mittenthal award at the national level which led to the promulgation, and incorporation into the National Agreement, of ELRM, SECTION 546.14 (See Arbitration Case No. HIC-4K-C 17373). In that award it was determined that apprising an employee of his position under the Workers Compensation Program was only proper and constituted no threat so as to lessen the propriety of a proposed or pending transfer of the employee. The Employer maintains that it made a legitimate effort to place the Grievant in a position that could accommodate a worker with the physical limitations that the Grievant had. It offered that position to the Grievant and he accepted it.

The grievance is without merit and should be denied because no violation of the National Agreement occurred in this matter.

DISCUSSION AND FINDINGS

The Arbitrator is persuaded that the violence to the spirit, if not the letter, of the contract was sufficiently significant here, to require the sustaining of the grievance to a certain degree.

In the matter of the Grievant's signing of the Form NRC 208-A2-4 (The 10/18/90 transfer of the Grievant to the Clerk craft), while the Arbitrator has reservations about the quality of the proofs presented by the Employer with respect to the need of the transfer due to operating efficiency requirements, and also, with respect to the degree and manner of the Employer's advising the Grievant of how his refusal to agree to the transfer would impact upon his Workmen's Compensation status and/or continuance of his employment - was more threatening than instructional, the Arbitrator cannot allow his Award to be determined by such speculation. Absent clear proof that its decision was tainted, the Employer correctly points out that the Mittenthal award (Case No. HIC-4K-C 17373) determined that informing an employee of his/her position under provisions of the Workmen's Compensation Program did not affect the Employer's right propose a transfer.

In finding no proper basis for disturbing the transfer of the Grievant to the Clerk craft however, the Arbitrator is not able to be equally supportive of the Employer's subsequent actions relating to the Grievant's other rights. In a number of ways, the Arbitrator is persuaded that the Employer failed to comply with the commands of the regulations to make "every effort" to enable the Grievant to return to his original craft. It is sufficient that this "Discussion and Findings" address just one of those ways.

It should be noted, to begin with, that the Grievant's acceptance of the 10/18/90 assignment to the Clerk craft was not a "voluntary transfer", i.e., one initiated by the Grievant, therefore, it was not covered by the rules of the contract and/or the regulations that pertain to a "permanent transfer". But the Employer makes it clear that it deemed the Grievant's transfer to the Clerk to have been a "permanent" one, and that is what requires the Arbitrator to sustain the grievance to the extent that he does. The unrefuted testimony at the hearing was that when the Grievant attempted to bid (between 3/15/91 and 3/21/91) on the relatively new classification of "ROUTER" in the Carrier craft, the Grievant's bid was only disqualified on the grounds that he was not in the Carrier craft. The testimony also was that a "Router" works mainly inside the postal facility and no evidence was presented to indicate that the Grievant's physical limitations would prevent him from performing the "Router" duties. The conclusion is forced that the Employer did not make the effort, repeatedly stressed in the regulations, to give the Grievant "priority consideration" in returning him to his former craft position within his work limitation tolerances.

AWARD

The Employer's procedural performance in disposing of the question of, whether or not the Grievant was entitled to re-assignment to the letter carrier craft, was sufficiently flawed so as to constitute a violation of the contract. The remedy hereby ordered is that:

- A. The Grievant shall be promptly reassigned to the Carrier craft in the classification of "Router", provided that such classification is still existent; and,
- B. The Grievant shall be allowed to displace any employee in the "Router" classification who has less seniority in the Carrier craft than the Grievant had accumulated as of the date the Grievant was transferred to the Clerk craft; and,
- C. The Grievant's seniority in the Carrier craft shall be computed on the basis of the total of what he had credited to him at the time he was transferred to the Clerk craft, plus, the time that has elapsed from the date that a "Router" was assigned pursuant to the March 1991 "Router" job posting - to the date the Grievant is reassigned to the Carrier craft in accordance with this Award; and,
- D. The Grievant shall be compensated for any lost wages that resulted from his not having been the one selected to fill the "Router" position. Such back wages lost, if any, shall be calculated from the date the "Router" job was first filled to the date the Grievant is assigned to it in accordance with this Award; and,

- E. The back wages referred to in Item (D) above shall have added to it such "out of schedule" pay as would be called for, if any, according to the particular schedules of work hours here involved; and,
- F. Since the Arbitrator has not been provided with the precise record of the work schedules that might be necessary for him to issue a more definitive Award with respect to Items (D) and (E) above, the appropriate representatives of the Parties are ordered to promptly meet for the purpose of resolving any pertinent questions. In the event that the Parties are unable to reach a mutually satisfactory resolution of the back wages aspect, and only that aspect, may be referred to arbitration by either Party. In that connection, the Parties are to understand that this Arbitrator is not necessarily retaining jurisdiction in the matter and that they are free to refer the disagreement to any arbitrator that they mutually select.



Harry B. Purcell
Arbitrator

October 5, 1991

APPLICABLE CONTRACT OR
REGULATIONS PROVISIONS

ARTICLE 13
**ASSIGNMENT OF ILL OR INJURED REGULAR
WORKFORCE EMPLOYEES**

Section 4. General Policy Procedures

A. Every effort shall be made to reassign the concerned employee within the employee's present craft or occupational group, even if such assignment reduces the number of hours of work for the supplemental work force. After all efforts are exhausted in this area, consideration will be given to reassignment to another craft or occupational group within the same installation.

B. The full-time regular or part-time flexible employee must be able to meet the qualifications of the position to which the employee is reassigned on a permanent basis. On a temporary reassignment, qualifications can be modified provided excessive hours are not used in the operation.

C. 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.

D. The reassignment of a full-time regular or part-time flexible employee under the provisions of this Article to an agreed-upon light duty temporary or permanent or other assignment within the office, such as type of assignment, area of assignment, hours of duty, etc., will be the decision of the installation head who will be guided by the examining physician's report, employee's ability to reach the place of employment and ability to perform the duties involved.

ARTICLE 19
HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Unions at the national level at least sixty (60) days prior to issuance. At the request of the Unions, the parties shall meet concerning such changes. If the Unions, after the meeting, believe the proposed changes violate the National Agreement (including this Article), they may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Unions upon issuance.

545.94 Deciding Appropriate Action. In considering the action to take in matters involving extended leave, the installation head sends Form 2573, *Request--OWCP Claim Status*, in duplicate, to the appropriate OWCP district office, and, upon receiving a completed Form 2573 from OWCP, does one of the following:

a. Extends LWOP/IOD for an additional period, at the end of which an additional determination must be made;

b. Authorizes a fitness-for-duty examination by a medical officer as provided in 547.31, 547.32, and 547.33, if OWCP does not respond within a maximum of 60 days or if OWCP's response does not explain the situation; or

c. Request permission to terminate LWOP/IOD as required in 545.93.93; and

d. Terminates LWOP/IOD after receiving permission from the Director, Office of Safety & Health, at Headquarters as follows:

(1) If the employee has 5 or more years of creditable civilian service, inform the employee of retirement rights. Allow the employee 14-calendar days to file a retirement application under the Civil Service Retirement Act.

(2) If the employee does not file a retirement application within the 14-day period, terminate LWOP/IOD and take action to separate the employee as described in ELM 365 and 568.

(3) If the employee has less than 5 years creditable civilian service, terminate LWOP/IOD and take action to separate the employee as described in 365.

546 Reemployment of Employees Injured On Duty

546.1 Law

546.11 General. The USPS has legal responsibilities to employees with job-related disabilities under 5 USC 8151 and the Office of Personnel Management's (OPM) regulations as outlined below.

546.12 Disability Fully Overcome Within 1 Year

546.121 Obligation. 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 equivalent position.

546.122 Rights and Benefits. Upon reemployment, all rights and benefits which an employee would have had or acquired in the former position had there been no injury or disability, must be restored.

546.13 Disability Fully Overcome More Than 1 Year

546.131 Obligation. When an employee has fully overcome the injury or disability more than 1 year after compensation began, the USPS must give an employee priority consideration for 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* will include all those former employees who are entitled to 10-point veteran preference.

b. *Group two* will include all other former employees who fully recover from their compensable disabilities in more than 1 year. Persons in *group one* will be considered for employment before persons in *group two*; and persons in *group two* will be considered before other sources of recruitment, such as transfers from other agencies, reinstatements, or appointments from hiring registers.

546.132 Rights and Benefits. The same as 546.122.

546.14 Disability Partially Overcome

546.141 Obligation. When an employee has partially overcome the injury or disability, the USPS has the following obligation:

a. *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. 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 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.

(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 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 the employee is normally assigned.

b. *Former Employees.* 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.

546.142 Rights and Benefits Upon Partial Recovery

a. **Seniority.** Former or current career employees who are either reemployed or reassigned respectively into bargaining-unit positions will be 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, will not be required to serve a new probationary period.

c. **Leave Credit.** Former employees who were eligible to accrue leave under ELM 510 will be credited with the total time compensation was received from the OWCP for purposes of computing leave rate accrual upon reemployment.

d. **Retirement.** Former employees who were covered by the Civil Service Retirement Act (see ELM 560) will be credited with the time spent on the OWCP compensation in computing retirement credit.

e. **Salary Determination.** The following salary restoration criteria must be met (Note: The term "Grade/Step," as used below, means "Grade/Salary" for individuals in a nonstep salary schedule):

(1) **Reemployment to the Former Grade/Step.** Those individuals who are reemployed into a position with the same grade/step as held at the time of injury or disability will receive the current salary for that grade and the step that the individual would have acquired had there been no injury or disability.

(2) **Reemployment to a Higher Grade.** 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, will be placed in the higher grade at the current salary for the grade/step which the individual would have acquired had there been no injury or disability. If that salary is between steps in the higher grade, the individual's salary will be increased to the next higher step.

(3) Reemployment to a Lower Grade/Step:

(a) **Salary Below Maximum of Lower Grade.** The individual will be placed in any higher step in the lower grade which is less than one full step above the current salary for the grade/step which the individual would have acquired had there been no injury or disability.

(b) **Salary Above Maximum of Lower Grade.** In those cases where the current salary for the grade which the individual would have acquired had there been no injury or disability exceeds the maximum salary of the lower grade position, the employee will be afforded a saved rate at the higher grade/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:

1. To former career employees who are being reemployed under 546.142.
2. To limited duty career employees,

3. To current career employees who have accepted a job offer and are reassigned to a lower grade due to a job-related injury.

(4) **Reemployment to a Position in a Different Salary Schedule.** When an individual is reemployed to a position in a salary schedule which is different from the schedule under which the employee was paid at the time of injury or disability, once reemployed, the individual will be treated under the rules applicable to the salary schedule to which reemployed:

(a) The individual will be reemployed at the grade appropriate for the position to which reemployed.

(b) The individual will be placed in any higher step in the new grade which is less than one full step above the current salary for the grade/step which the individual would have acquired had there been no injury or disability.

(c) If reemployment is a nonstep schedule, the individual will be placed at a salary plus any salary increases the individual would have acquired had there been no injury or disability. 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 which the individual would have acquired had there been no injury or disability exceeds the maximum salary of the new grade, the individual will be 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.

(e) **Former Position Under Different Salary Schedule.** Where 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/step will be determined by:

- (1) Field Director, Human Resources, for field positions.
- (2) General Manager, Headquarters Personnel, for Headquarters and administrative support facilities.
- (3) Regional Manager, Employee Relations, for regional positions.

(f) **Step Increases.** Upon reemployment, 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 recent step, merit or equivalent increase the individual would have acquired had there been no injury or disability.

546.143 Relocation Consideration

a. **Scope.** When a former partially recovered employee is receiving OWCP compensation and is being considered for reemployment, but has permanently relocated to a new geographic area since the time of his or her compensable injury, 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 will be considered only after all reasonable attempts have been made to rehire within the area of the employee's present place of residence.

546.6 Reemployment Procedures

546.61 OWCP Referrals. OWCP will make referrals of current and former postal employees who may be candidates for reemployment.

546.611 Work Limitation Tolerances. The individual's physician of record, or other physician selected by the individual or OWCP, will furnish OWCP with a definitive medical summary, clearly documenting the medical limitations that will have to be accommodated.

546.612 OWCP Evaluation. The OWCP District Medical Director evaluates the work limitation tolerances submitted by the physician of record and, upon concurrence, refers them to the USPS for consideration.

546.62 USPS Medical Review**546.621 Reemployment Physical Examination**

a. The medical officer will evaluate fully all medical records referred to the USPS from the OWCP district offices.

b. A complete physical examination paid for by the USPS will be required by the appointing officer. The result of the physical examination will be documented on Forms 2485, *Medical Examination and Assessment*, and 2489, *Identification of Physical/Mental Disability*.

c. The medical officer will make a statement of concurrence with the OWCP documented medical limitations or further restrict the former employee's work limitation tolerances. The medical officer can in no way liberalize the medical limitations tendered by the OWCP district offices.

546.622 Special Considerations

a. An individual who is referred for reemployment consideration by OWCP may have some degree of concurrent disability which is not caused by or related to the original job injury or disability. The medical officer should examine for any concurrent medical condition that might prevent the individual from performing the duties of the position for which the individual is being considered.

b. The medical officer will carefully evaluate all concurrent disabilities and include their potential impact in the recommendation for reemployment to the appointing official.

c. All former employees, now permanently and partially disabled, have some type of residual handicap. The medical officer who conducts the physical examination is responsible for assigning the correct handicap code as defined in Handbook EL-301, *Processing Personnel Actions*. Note: This is a new handbook (scheduled for publication in the near future) that will replace text currently found in Chapter 6 of Handbook P-11, *Personnel Operations*. The identifier for P-11 has been changed to EL-311.

546.63 Offer of Appointment.

546.631 Evaluation. Upon receipt and evaluation of the OWCP referral containing documented medical limitations, and evaluation of the medical officer's rec-

ommendations, the appointing official will determine if a reemployment offer can be made.

546.632 Interview. During the preemployment interview, the appointing officer will ensure that the individual receives the following information:

a. In-depth analysis of medical limitations and the individual's responsibility to work within the prescribed work limitation tolerances.

b. If applicable, the status of injury compensation and disability retirement benefits and future eligibility.

c. A full explanation of all restoration rights and benefits (see 546.3).

d. Full particulars regarding the position including title, duties, grade, salary, location of work assignment, and all other information required in a preemployment interview. See Handbook EL-311, *Personnel Operations*.

e. Instructions for completion and submission of any required employment forms.

546.633 Processing Personnel Actions. The reemployment of former employees who are injured or disabled on duty requires uniform information on Form 50-B, *Request for Personnel Action (Processing Copy for New Hires Only)*, before forwarding to the Employee and Labor Relations Information Center. See Handbook EL-301, *Processing Personnel Actions*, and Postal Bulletin 21685, (8-11-88).

546.64 Employee's Refusal of Job Offer. When a current or former employee is offered suitable employment or reemployment by the USPS (i.e., employment or reemployment that the OWCP has deemed suitable) or if the current or former employee is offered appropriate employment, that individual is obligated to return to such employment. However, if the current/former employee refuses an offer of suitable employment/reemployment, the appointing official must do the following:

a. Offer the individual an opportunity to sign a declination of employment.

b. Advise the individual that the effect of such a refusal may result in the termination or reduction of compensation benefits by the Department of Labor.

c. Notify the OWCP district office by telephone of the declination and the reasons given.

d. Within 2 working days, forward a full written summary of the current/former employee's interview including the signed declination and medical evaluations or other pertinent information to the OWCP district office. The OWCP is then responsible for notifying the Office of Personnel Management when the individual's disability retirement status is to be evaluated.

546.65 Management's Refusal to Reemploy. The appointing official may not be able to accommodate the former employee for medical reasons or other considerations. If the former employee will not be reemployed, the appointing officer must:

a. Notify the Division General Manager/Postmaster with written justification stating specific reasons for refusal to reemploy. If the Division General Manager/Postmaster agrees with the appointing officer's