

RESOLVE



STEP B DECISION

Step B Team:	Decision:	RESOLVE
USPS:	USPS Number:	G11N-4G-C 1751 4086
Mike Goden	Grievant:	Edward Cuevas
NALC:	Branch Grievance Number:	421-504-17
Louise Jordan	Branch:	421
	Installation:	Converse
District:	Delivery Unit:	MPO
Rio Grande	State:	TX
	Incident Date:	05/23/2017
USPS Formal A:	Informal Step A Meeting:	06/05/2017
Luis Colon	Formal Step A Meeting:	06/22/2017
NALC Formal A:	Received at Step B:	06/28/2017
Richard Gould	Step B Decision Date:	06/29/2017
	Issue Code:	13.4165
	NALC Subject Code:	507699

ISSUE:

Did management violate Article 19 of the National Agreement, via the Handbooks ELM 541,546, EI-505 and/or the Federal Employees Compensation Act (FECA) when they failed to provide the grievant with limited duty work on 5/23/2017? If so, what is the appropriate remedy?

DECISION:

The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. The case file evidenced a violation. The grievant should have been offered limited duty work when he reported on 05/23/2017. The DRT further agreed the eight hours of sick leave used by the grievant on 05/23/2017 be restored and will be converted to eight hours of paid administrative leave. See the DRT Explanation below.

EXPLANATION:

The grievant in this case is Edward Cuevas, a full time regular letter carrier assigned to the Converse Main Post Office with seniority dating to 01/31/2014. On 05/22/2017 the grievant sustained an injury to his left wrist while performing his duties. On 05/23/2017 he reported for duty with a Texas Medclinic Work Status Report detailing his limitations. Management did not provide any limited duty work for that day and the grievant was forced to use eight hours of sick leave. Management did complete an Offer of Modified Assignment (Limited Duty) on 05/24/2017.

Unable to achieve a resolution through the Informal and Formal A steps of the grievance procedure, the union appealed to Step B.

The union contends management Article 19 of the National Agreement, via the Handbooks ELM 541,546, EI-505 and/or the Federal Employees Compensation Act (FECA) when they failed to provide the grievant with limited duty work on 05/23/2017. The union contends management made no attempt to provide the grievant work on 05/23/2017.

Management met at Formal Step A, but no management contentions were included in the file.

The **DRT** reviewed the case file and determined without a rebuttal from management, the union's position had merit. The DRT reviewed the case file and determined management violated ELM 546 and EL-505 by failing to offer the grievant adequate work within his medical limitations. The ELM provides the following language regarding employees who have partially overcome their disability due to a compensable injury:

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. Persons in permanent rehabilitation positions have the same rights to pursue promotional and advancement opportunities as other employees.

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.

Handbook EL-505, Injury Compensation, contains Postal Service rules and regulations concerning workers who have partially recovered from compensable injuries. On pages 75 and 76, EL-505 includes the following relevant obligations for the Postal Service's Injury Compensation Control Office:

If the employee's duty status has been indicated, do the following:

- If fit for full duty, (i.e., no disability, capable of working his or her regular job), determine if the employee is working. If the employee is back to regular work, no further follow-up is needed. If not, find out the reason.
- If fit for limited duty, (i.e., partially disabled, capable of working within his or her medical restrictions), determine if a proper limited duty job offer was made.
- Document any change in duty status. Immediately send a new CA-17 to the treating physician to formally document any change. (Emphasis added)
SEE Chapter 7, Limited Duty Program Management.
- If totally disabled (i.e., cannot work at all in any capacity), determine whether the employee elected COP on the CA-1, and if so, whether COP has been provided.

EL-505, on page 24, also provides the following regarding CA-17, Duty Status Report:

CA-17, Duty Status Report

The CA-17 provides management and OWCP with an interim medical report containing information as to the employee's ability to return to any type of work. Initially issued by the supervisor at the time of injury, subsequent issuances are performed by either the ICCO or control point personnel. The employee is responsible for having the attending physician complete the CA-17 at each visit when there is a change in medical condition and for its prompt return to the ICCO or control point.

The ICCO submits the completed form to OWCP within 10 days from date of receipt.

Management is reminded of the "pecking order" on pages 163 and 164 of Handbook EL-505 that must be followed in assigning Limited Duty work:

Priority for Assignment

Whenever possible, assign qualified employees to limited duty in their regular craft, during regular tour of duty, and in their regular work facility.

Prioritize the limited duty 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 limited duty 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 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.

— 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

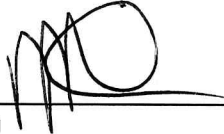
RIO GRANDE DISPUTE RESOLUTION TEAM
10410 Perrin Beitel Road, Rm 1059
San Antonio, TX 78284-9608
PHONE 210-368-1760, 210-368-5547, FAX 210-368-8525

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:

As an employee partially recovered from a compensable injury, the grievant was both entitled and obligated to perform available work on 05/23/2017.

Based on its review of the case file, the DRT mutually agreed to the decision and remedy above.



Mike Goden
USPS Step B Representative



Louise Jordan
NALC Step B Representative

cc:

LR Manager, SW Area
NALC Region 10 NBA
Rio Grande District HR Manager
Rio Grande District LR Manager
Management Formal Step A Designee

NALC Branch President
NALC Formal Step A Designee
Manager, Rio Grande District
Postmaster, Converse, Texas
DRT File

Grievance File Contents

PS Form 8190
Union Contentions
Grievant Statement
OWCP Claim Report
CA-2 Employees Rights
PS Form 1769/301 Accident Report
Form CA-1

Texas Medclinic Work Status Report
Emergency Medical Treatment Authorization
Email Richard Gould to Gaye Grisham
US Dept of Labor Duty Status Report
PS Form 2499 Offer of Modified Assignment
Employee Everything Report
Item O-13 Extension