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

October 14, 1983

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
817 14th Street, NW
Washington, D.C. 20005-3399

Re: M. Biller
Washington, D.C.
H1C-NA-C-74

Dear Mr. Burrus:

On October 5, 1983, we met to discuss the above-captioned national level grievance.

The American Postal Workers Union has maintained that the U. S. Postal Service is returning injured employees to duty under the OWCP Rehabilitation Program but, in doing so, is not complying with provisions of Section 341.1 of the Personnel Operations Handbook (P-11) which require that such assignments must be made ". . . in accordance with any collective bargaining agreement." In submitting this issue as an interpretive dispute at Step 4 of the grievance procedure, the union further maintained that Article 30 of the 1981 National Agreement permits locals to negotiate a number of items. The items specifically referenced in this instance are set forth in Article 30 as items numbered 15, 16 and 17, all of which pertain to light duty assignments.

During our discussion, you indicated that the union's purpose in submitting this matter to Step 4 was to raise the following question: Are limited duty employees covered by the collective bargaining agreement? As I indicated during our discussion, the answer to that question is set forth in Section 546 of the Employee and Labor Relations Manual (ELM). Specifically, 546.2 provides as follows:

> Reemployment under this section will be in compliance with applicable collective bargaining agreements. Individuals so reemployed will receive all appropriate rights and protection under the applicable collective bargaining agreement.

In view of the foregoing, I do not believe that our respective organizations have a dispute over this issue. Where reemployment occurs under the circumstances described in Section 546, such reemployment must be in keeping with the provisions of any applicable collective bargaining agreements.

Sincerely,

George S. McDougald

George S. McDougald
General Manager
Grievance Division
Labor Relations Department

American Postal Workers Union, AFL-CIO
817 Fourteenth Street N.W. Washington D.C. 20005 • (202) 842-4250

8A

BILLER
President

July 8, 1983

James C. Gildea
Assistant Postmaster General
Labor Relations Department
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

HC-NAT-C-74

Dear Mr. Gildea:

In accordance with the OWCP Rehabilitation Program the Postal Service is returning injured employees to positions within the Postal Service. Article 30 of the Collective Bargaining Agreement permits locals to negotiate the following items:

> The number of light duty assignments within each craft or occupation group to be reserved for temporary or permanent light duty assignments.
>
> The method to be used in reserving light duty assignments so that no regularly assigned member of the regular work force will be adversely affected.
>
> The identification of assignments that are to be considered light duty within each craft represented in the office.

The Postal Service, as a matter of policy, does not abide by these provisions as negotiated at the local level, even though Subchapter 341.1 of the Personnel Operations Handbook (P11) requires that such assignments "be in accordance with any collective bargaining agreement."

In accordance with Article 15, Section 3 of the National Agreement the union submits this issue as an interpretive dispute at Step 4 of the grievance procedure.

The precise issue to be decided is whether or not Article 30 of the 1981 National Agreement and Part 341 and 341.1 of the P11 Handbook require the assignment of limited duty employees to be in accordance with the collective bargaining agreement.

Please contact Executive Vice President William Burrus for discussion of this issue.

Sincerely,

Moe Biller
President

MB:WB:mc
opeiu #2
afl-cio

American Postal Workers Union, AFL-CIO
1300 L Street, NW, Washington, DC 20005

March 15, 1988

William Burrus
Executive Vice President
(202) 842-4246

Dear Mr. Mahon:

The Equal Employment Opportunity Commission has ruled in Case No. 101-84-X-0020 (Agency No. 5-1-0691-3) that partially handicapped employees returning to duty are entitled to placement in the step and level they would have obtained, but for the on-the-job injury.

This communication is to inquire as to the Postal Service's intent to amend its regulations on this subject to conform with the Decision and to adjust the pay of similarly situated employees who have not presently reached the top step and are being compensated at a salary below that which is required by law.

Please advise as to the intent of the Postal Service.

Sincerely,

William Burrus
Executive Vice President

Joseph Mahon
Asst. Postmaster General
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

WB:rb

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

Time limits were extended by mutual consent.

Sincerely,

Arthur S. Wilkinson
Grievance & Arbitration
Division

Lawrence G. Hutchins
Vice President
National Association of
Letter Carriers, AFL-CIO

The final decision of the agency rejected the Complaints Examiner's recommended finding that appellant was a "qualified handicapped person." Relying on Jasany v. U.S. Postal Service, 755 F.2d 1244 (6th Cir. 1985), the agency stated that reasonable accommodation does not include the elimination of essential functions of a position. Since appellant was unable to perform the normal duties or essential functions of a regular Distribution Clerk, the agency concluded that appellant was not a "qualified handicapped person" as that term is defined in EEOC Regulation 29 C.F.R. §1613.702(f). In the agency's opinion the Complaints Examiner's recommended finding that the appellant could perform the essential functions of a Time and Attendance Clerk position ignored the fact that appellant was reemployed as a Distribution Clerk. Assuming, arguendo, that appellant was a qualified handicapped person, the agency found that the differing treatment accorded fully-recovered employees and partially-recovered employees in terms of within-grade step increases was consistent with 5 U.S.C. §8151. Accordingly, the agency rejected the recommendation of the Complaints Examiner and found that appellant had not been discriminated against based on physical handicap in violation of the Rehabilitation Act.

ANALYSIS AND FINDINGS

The first issue to be addressed is whether appellant is entitled to the protections of the Rehabilitation Act. It is not disputed that appellant is a "handicapped person" as that term is defined in EEOC Regulation 29 C.F.R. §1613.702(a). However, relying on Jasany v. U.S. Postal Service, 755 F.2d 1244 (6th Cir., 1985), the agency contends that appellant is not a "qualified handicapped person" in that, with or without accommodation, appellant cannot perform the essential functions of a regular Distribution Clerk position without endangering his health and safety. In Jasany, the plaintiff was hired primarily to operate the LSM-ZMT machine. Because of a mild case of strabismus, the plaintiff was unable to operate the machine. The Court held that the "post office was not required to accommodate Jasany by eliminating one of the essential functions of his job." Jasany, supra at 1250 (emphasis in original).

The holding of Jasany, supra, is consistent with EEOC Regulation 29 C.F.R. §1613.704(b) in that the "job restructuring" permitted by the regulation does not require the elimination of essential functions of the employee's position. However, Jasany and EEOC Regulation 29 C.F.R. §1613.704(b) are of limited applicability in the instant case in light of the agency's voluntary restructuring of appellant's position.

(Footnote Continued)
calendar days. However, EEOC Regulation 29 C.F.R. §1613.604(i) is only applicable to class action complaints. Pursuant to EEOC Regulation 29 C.F.R. §1613.220(d), the agency had 30 calendar days from date of receipt to reject or modify the Recommended Decision of the Complaints Examiner.

Here, the agency's voluntary offer of reemployment recognized appellant's physical restrictions. Further, the agency agreed to assign duties to appellant which were within his physical limitations. At the hearing, witnesses testified that appellant spent about six hours a day on timekeeping duties. Said duties were within appellant's physical limitations. Appellant was assigned to the Box Section for approximately two hours a day. While he was unable to perform some duties, he was able to box mail, a principal function of the Box Section. While appellant's physical restrictions prevented him from performing all of the the essential functions of a regular Distribution Clerk, the agency's voluntary offer of reemployment modified the duties of a Distribution Clerk position so as to accommodate appellant's physical restrictions. Evidence that appellant's job title was "Distribution Clerk" and that appellant was unable to perform the regular duties of a Distribution Clerk does not remove appellant from the protections of the Rehabilitation Act. In view of the agency's voluntary commitment to assign duties to appellant which were within his physical restrictions as well as appellant's performance of the essential functions of his timekeeping duties and his ability to box mail, the Commission finds that appellant is a "qualified handicapped person" entitled to the protection of the Rehabilitation Act.

In the context of injured employees returning to work more than one year after commencement of compensation, it is not disputed that the agency treats fully-recovered employees more favorably than partially-recovered employees.[11] Thus, the Commission finds that appellant has established a prima facie case of disparate treatment based on physical handicap. Prewitt v. U.S. Postal Service, 662 F.2d 292, 305, n. 19 (5th Cir. 1981). The agency contends that 5 U.S.C. §8151(a), as interpreted by the Office of Personnel Management, authorizes this disparate treatment. Thus, the next issue to be addressed is essentially an issue of law -- namely, whether 5 U.S.C. §8151(a) authorizes the disparate treatment of partially recovered injured employees, thereby limiting the scope of the Rehabilitation Act.

The Federal Employees Compensation Act (FECA), as amended, 5 U.S.C. §8151, sets forth the retention rights of injured or disabled employees of certain Federal government departments and agencies, including the United States Postal Service.[12] The statute provides, in relevant part, that in "the event the

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[11]The agency stipulated that, had appellant returned to work fully-recovered after being off work for over a year, appellant would have received the step increases for the period he was receiving compensation.

[12]The legislative history of FECA reflects that 5 U.S.C. §8151 was added to the Act in 1974. In Senate Report No. 93-1081, the Labor and Public Welfare Committee stated that the amendment made by Section 22 (§8151) assured "injured employees who are able to return to work at some later date that, during their

(Footnote Continued)

individual resumes employment with the Federal Government, the entire time during which the employee was receiving compensation under this chapter shall be credited to the employee for the purposes of within-grade step increases...." (emphasis added). By letter dated March 6, 1979, OPM advised the agency that 5 U.S.C. §8151(a) applied to a former employee whose disability is partially overcome more than one year after the commencement of compensation benefits.

The agency relies on OPM's opinion that a partially recovered employee, who is restored more than one year after the commencement of compensation benefits, "may be restored to any position -- even one at a lower pay and grade than the one he or she left." However, OPM's opinion that a partially recovered employee may be restored to any position, even one that is at a lower pay and grade, is not applicable to the instant case. The record reflects that appellant was restored to the position he previously held, namely, Distribution Clerk, albeit the duties were modified to accommodate appellant's handicap.

Similarly, the agency argues that its interpretation of 5 U.S.C. §8151(a) is consistent with the interpretation given by the Office of Workers' Compensation Programs of the Department of Labor. In a pamphlet entitled "Federal Injury Compensation," OWCP answered questions about FECA. Specifically, the agency relies on OWCP's answers to Questions 72 and 73. The agency appears to argue that since it is theoretically possible to rehire an injured employee at a lower rate of pay, then 5 U.S.C. §8151(a) cannot be interpreted as requiring that a partially-recovered employee be given credit for time on compensation for the purpose of within-grade step increases. However, the Commission notes that OWCP's response to Question 77 is not in conflict with OPM's statement that 5 U.S.C. §8151(a) is applicable to partially recovered employees. OWCP explained that the provision assures Federal employees injured on-the-job that "upon their return to Federal employment they will incur no loss of benefits which they would have received but for the injury (or disease)."

In the agency's January 24, 1985 prehearing statement, the agency represented that the MSPB had determined the Postal Service's actions were in accordance with 5 U.S.C. §8151 and applicable regulations. The Commission notes that the Board's October 26, 1981 Decision found that the agency had fulfilled its obligation to restore appellant. The Board further noted that "[a]ppellant's claims do not go to the issue of restoration, per se, but to his apparent belief that he should have been restored to a wholly different position [Letter Carrier] at a different rate of pay from the one he had held. The Board does not have jurisdiction to consider this aspect of appellant's claim." (emphasis added). Thus, it is evident that the MSPB decision did not address appellant's

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(Footnote Continued)
period of disability, they will incur no loss of benefits that they would have received were they not injured." The Senate Report does not distinguish between fully-recovered employees and partially-recovered employees.

contention as to his within-grade step level. See Robert Jorgensen v. U.S. Postal Service, MSPB No. SE03538110038, October 26, 1981.[13]

In addition, the agency directs the Commission's attention to the decision of an Arbitrator in U.S. Postal Service v. American Postal Service Union, Grievance Nos. H8C-4A-C-11834, 11772 and 11832, dated September 3, 1982. The union claimed that the two grievants should have been reinstated at the salary levels they would have occupied had they not been injured on-the-job. However, the Arbitrator's decision focused on the union agreement. The Arbitrator noted that, pursuant to a provision of the union agreement, the union had the opportunity to challenge Postal Service regulations which denied step increases to partially recovered employees. However, in the opinion of the Arbitrator the union failed to challenge the regulation at the appropriate time. Accordingly, the Arbitrator denied the grievances. Since the focus of the Arbitrator was whether the agency had violated the union contract and whether the union had timely challenged the alleged violation, the Arbitrator's decision is of limited relevance to the instant case.

Finally, the agency argues that step increases are not automatic. Rather, they are based on merit. However, the agency concedes that had appellant returned as a fully recovered employee, appellant would have been given credit for step increases to which he would have been entitled but for the injury. Thus, in some instances employees are given credit for time on workers' compensation without regard to merit.

In view of the purpose of the legislation, OPM's interpretation of 5 U.S.C. §8151(a) as applying to partially recovered employees, and the specific reference in 5 U.S.C. §8151(a) to within-grade step increases, the Commission finds that the agency erred in interpreting 5 U.S.C. §8151(a) as permitting disparate treatment between partially recovered and fully recovered injured employees. In summary, 5 U.S.C. §8151 and the Rehabilitation Act are complementary. The minimum restoration rights and benefits due former civil servants who sustain on-the-job injuries are set forth in 5 U.S.C. §8151. The Rehabilitation Act provides, in part, that "handicapped" persons (including former federal employees who have partially recovered from on-the-job injuries) are not subjected to discrimination in the form of disparate treatment because of their handicaps.

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[13] Similarly, in James Blackburn v. U.S. Postal Service, MSPB No. SF03538110476, July 30, 1982, the Board on its own motion vacated an Initial Decision in favor of the appellant therein and dismissed the appeal for lack of jurisdiction. The Initial Decision in Blackburn had held that the appellant was entitled to be rehired at the step level he would have held in the absence of the injury.

Having given within-grade step increases to fully recovered injured employees who resume employment more than one year after commencement of compensation, the agency is required by §501 of the Rehabilitation Act, as amended, to give within-grade step increases to similarly situated partially recovered injured employees. Accordingly, the Commission finds that the agency violated the Rehabilitation Act by denying appellant, a qualified handicapped person, the within-grade step increases to which he would have been entitled had he fully recovered from his on-the-job injury. Accordingly, the final agency decision is REVERSED.

CONCLUSION

Based upon a review of the record, the decision of the Equal Employment Opportunity Commission is to reverse the agency's finding of no discrimination based on handicap and to enter a finding of discrimination based on handicap. In order to remedy its past discrimination against appellant, the agency shall comply with the directions of the following Order:

ORDER

A. Since the record establishes that appellant would have been rehired at a higher step level but for the discrimination herein, the agency is directed to immediately and retroactively amend personnel records to reflect that appellant was rehired on November 24, 1980 and March 31 1981 at the appropriate within-grade step level with backpay and all other benefits which would have accrued in the absence of discrimination. Backpay shall be computed in the same manner as prescribed by 5 C.F.R. §550.805.

B. The agency is directed to ensure that appellant and similarly situated handicapped employees are not subjected to discrimination in the future.

C. The agency is directed to post at its facility in Eugene, Oregon, copies of the attached notice. Copies of the notice, after being signed by the agency's duly authorized representative, shall be posted by the agency immediately upon receipt, and be maintained by it for 60 consecutive days, in conspicuous places, including all places where notices to employees and applicants for employment are customarily posted. The agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material.

IMPLEMENTATION OF THE COMMISSION DECISION

Under EEOC regulations, compliance with the Commission's corrective action is mandatory. The agency must report to the Commission, within thirty (30) calendar days of receipt of the decision, that corrective action has been taken. The agency's report should be forwarded to the Compliance Officer, Office of Review and Appeals, Equal Employment Opportunity Commission, 5203 Leesburg Pike, Falls Church, Virginia, 22041. A copy of the report should be sent to the appellant.

Summary

Based on the above, the Commission finds that appellant has established a *prima facie* case of sexual harassment, but that the agency was able to show by clear and convincing evidence that she would not have been reinstated regardless of the harassment. Further, appellant has failed to prove a *prima facie* case of discrimination based on mental handicap, retaliation and sex. Appellant's allegation of constructive discharge is untimely.

Conclusion

Based upon a thorough review of the record and for the foregoing reasons, the Commission concludes that appellant has failed to establish discrimination based on sex, handicap, and/or reprisal. It is therefore the decision of the Commission to AFFIRM the agency's final decision finding no discrimination.

[See RR-C, FEOR p. I-402 for Statement of Review Rights.]

[1] 29 C.F.R. Part 1614 (57 Fed. Reg. 12634) became effective October 1, 1992. This rule revises the way federal agencies and the Equal Employment Opportunity Commission will process administrative complaints and appeals of employment discrimination filed by federal employees and applicants for federal employment.

[2] The EEO counselor's report fails to indicate that appellant alleged retaliation; however, a reprisal allegation was included in appellant's request for counseling.

[3] In her formal complaint, appellant marked retaliation as the only basis and noted that the EEO counselor had erroneously investigated her complaint as one alleging sex discrimination, when her complaint "was more directly on reprisal." Although the agency's letter accepting appellant's complaint indicated that the only basis alleged was sex discrimination, the investigation encompassed both reprisal and sex discrimination.

[4] The AJ added these bases over the objection of the agency, which requested that the complaint be remanded for a supplemental investigation.

[5] During this period, appellant took 80 hours of sick leave, which included 32 hours of disapproved sick leave, in addition to 32 hours of AWOL.

[6] It is not clear from the complaint file when appellant's resignation letter was received by the agency.

[7] According to hearing testimony, loudspeakers were located throughout the postal facility and were used to page employees.

[8] Appellant testified that she had given this letter to a union official prior to her resignation.

[9] To the extent that appellant intended to raise a claim of hostile environment sexual harassment, such a claim was untimely raised. The Commission apprises the agency, however, that given the AJ's credibility determinations regarding Supervisor 1's testimony and the patently offensive and pervasive nature of the conduct alleged, appellant's allegations may well have resulted in a finding that a hostile environment had existed. We remind the agency of its manifest duty to ensure that conduct such as that of Supervisor 1 does not recur in the future.

¶933062

JACKSON
EEOC Comm.

Richard Jackson v. Runyon, Postmaster General, U.S. Postal Service

EEOC No. 01923399
November 12, 1992

4.0241 Individual Complaint/Agency EEO Procedure, Informal Adjustment, Offer
43.0211 Remedies, Damages, Compensatory
43.048 Remedies, Make-Whole

SUMMARY

To resolve the appellant's complaint alleging sex, color, age, physical handicap, and reprisal discrimination (he was followed and harassed during the performance of his duties by a 2048 supervisor at the direction of a higher-level agency official), the agency forwarded the appellant a settlement agreement, which had been certified as full relief by an appropriate agency official. The agreement provided that appellant would be "treated fair and equally as all other employees" and would be "treated with dignity and respect." There was no evidence that the appellant responded to the agency's offer; thereafter, the agency canceled appellant's complaint for failure to accept a certified offer of full relief. On appeal, the Commission concluded that the agency's offer, in fact, did not constitute an offer of full relief because it failed to address the issue of compensatory damages in the form of medical expenses allegedly incurred by appellant as a result of the stress caused by the agency's alleged harassment. The Commission held, in this precedent-setting decision, that the Civil Rights Act of 1991 makes compensatory damages available to federal sector complainants in the administrative process. The Commission explained that where a complainant shows objective evidence that he or she has incurred compensatory damages, and that the damages are related to the alleged unlawful discrimination, the agency must address the issue of compensatory damages in its offer of full relief. Because the appellant requested damages for medical expenses incurred, the agency, prior to making its offer of full relief, should have requested from the appellant objective evidence of the alleged damages incurred. However, it also held that an agency need only consider the issue of compensatory damages for alleged discriminatory conduct occurring on or after November 21, 1991 (the effective date of the Civil Rights Act of 1991). Thus, because the appellant was not obliged to accept the agency's offer, the agency's decision to cancel the complaint under 29 CFR 1614.107(h) was vacated. The complaint was remanded for further processing.

Decision

Introduction

On July 7, 1992, Richard Jackson (hereinafter referred to as appellant) timely initiated an appeal to the Equal Employment Opportunity Commission (EEOC) from the final decision of the Postmaster General, United States Postal Service (hereinafter referred to as the agency), received on July 6, 1992. The agency's decision cancelled appellant's complaint pursuant to

29 C.F.R. § 1613.215(a)(7) for failure to accept an offer of full relief. Appellant's appeal was initiated pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, § 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791 *et seq.*, and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 *et seq.* This appeal is accepted for decision by the Commission in accordance with EEOC Order No. 960, as amended.

Issue Presented

The issue presented herein is whether the agency properly cancelled appellant's complaint on the grounds that appellant failed to accept a certified offer of full relief.

Background

A review of the record reveals that appellant filed a formal complaint dated April 3, 1992, alleging discrimination on the bases of sex (male), color (black), age (44), physical handicap (high blood sugar, hypertension, heart condition), and reprisal (prior EEO activity), when on or about January 10, 1992, he was followed and harassed during the performance of his duties by a 204B supervisor (hereinafter Supervisor A), at the direction of a higher-level agency official (hereinafter Supervisor B). During EEO counseling, appellant requested, *inter alia*, a written apology, that Supervisor B be transferred out of the Maintenance Unit, that the harassment stop and he be treated with dignity and respect, and damages for medical expenses.

By letter of May 20, 1992, the agency forwarded to appellant a settlement agreement, which had been certified as full relief by an appropriate agency official on May 13, 1992. Appellant was informed that if he failed to accept the agency's offer within fifteen days, his complaint would be subject to cancellation under applicable Regulations. 29 C.F.R. § 1613.215(a)(7). The settlement agreement provided that appellant would be "treated fair and equally as all other employees" and would be "treated with dignity and respect." There is no evidence in the record that appellant responded to the agency's offer.

Thereafter, the agency issued a final agency decision (FAD) dated June 26, 1992, cancelling appellant's complaint for failure to accept a certified offer of full relief in accordance with 29 C.F.R. § 1613.215(a)(7). This appeal followed.

On appeal, appellant, through his representative, indicates that all he has been offered by management is a "formula of trite phrases." Appellant reasserts that Supervisors A and B treated him in a discriminatory manner; in addition, appellant contends that his allegations were given only a cursory investigation by the agency. Finally, appellant states that this particular incident as well as other incidents involving Supervisor B have caused appellant needless stress. Appellant states that he suffers from high blood pressure, and that this incident in particular has exacerbated his condition to the extent that he has had to seek additional medical care. Appellant contends that the cost of transportation to the doctor, the cost of necessary medication, and a portion of the doctor's fees should be borne by the agency. Appellant also requests an apology from Supervisor B.

Analysis and Findings

Pursuant to EEOC Regulation 29 C.F.R. § 1614.107(h), (formerly 29 C.F.R. § 1613.215(a)(7)), an agency may cancel a complaint if the complainant rejects a certified offer of full relief. The agency must provide written certification to the complainant at the time the offer is presented that the offer constitutes full relief. When the complainant refuses to accept the agency's offer within fifteen calendar days of its receipt, the agency may cancel the complaint. In the instant case, the agency cancelled appellant's complaint when appellant did not respond to the agency's certified offer of full relief. Therefore, the dispositive issue concerns whether or not the agency's offer constituted full relief for the allegations raised in appellant's complaint.

Full relief is defined as that relief that would have been available to appellant had he prevailed on every issue in his complaint. *See Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975). In *Albemarle*, the court held that the purpose of Title VII is to make victims whole. *Albemarle*, 422 U.S. at 418-19. This requires eliminating the particular unlawful employment practice complained of, as well as restoring the victim to the position he or she would have occupied were it not for the unlawful discrimination. *Albemarle*, 422 U.S. at 420-21. Accordingly, the offer of full relief must be evaluated in terms of whether or not it includes everything to which the complainant would be entitled if a finding of discrimination were entered with respect to all of the allegations in the complaint. *Deborah Merriell v. Department of Transportation*, EEOC Request No. 05890596 (August 10, 1989) [90 FEOR 3034].

In this case, the agency's offer provides that appellant will be treated fairly and in the same manner as other employees, and that he will be treated with dignity and respect. The agency's offer, however, fails to address the issue of compensatory damages in the form of medical expenses allegedly incurred by appellant as a result of the stress caused by the agency's alleged harassment. The Commission finds that the Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071, ("CRA") makes compensatory damages available to federal sector complainants in the administrative process. This conclusion is based upon a thorough examination of the statute's language and policy considerations.

Where the complainant shows objective evidence that he or she has incurred compensatory damages, and that the damages are related to the alleged unlawful discrimination, the agency must address the issue of compensatory damages in its offer of full relief.[1] Here, the appellant has stated that he suffered stress from the agency's alleged harassment, and that this stress resulted in his seeking additional medical care for his high blood pressure. The record shows that in the pre-complaint counseling process, the appellant requested damages for medical expenses incurred. Accordingly, prior to making its offer of full relief, the agency should have requested from the appellant objective evidence of the alleged damages incurred. In this case, such proof could have taken the form of receipts and/or bills for medical care, medication and transportation to the doctor. In addition, the agency should have requested that appellant provide objective evidence linking these damages to the alleged unlawful discrimination. Such a showing would have been sufficient to require the agency to address the issue of compensatory damages in its offer of full relief. The relief offered by the agency, however, did not address the issue of compensatory damages. The Commission finds therefore that the agency's offer does not constitute full relief.[2]

When a federal agency or the EEOC finds that a federal employee has been discriminated against, the agency must provide full relief.[3] *See* 29 C.F.R. § 1614.501(a); 29 C.F.R. Part 1613, Appx. A. Under the CRA, this would include a payment of compensatory damages to an identified victim of discrimination on a make-whole basis for any losses suffered as a result of the discrimination. *See* EEOC Notice No. 915.002, "Enforcement Guidance: Compensatory and Punitive Damages Available under § 102 of the Civil Rights Act of 1991" (July 14, 1992). The Commission has recognized that the basic effectiveness of its law enforcement program, whether in the private or federal sector, is dependent upon securing prompt, comprehensive and complete relief for individuals affected by violations of the statutes it enforces. *See* 29 C.F.R. Part 1613, Appx. A.

Section 102 of the CRA permits a complaining party pursuing an "action" under Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e *et seq.*, the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12101 *et seq.*, or the federal employment sections of the Rehabilitation Act of 1973, 29 U.S.C. § 791, to recover compensatory damages in the case of intentional discrimination. While it may be argued that the term "action" as used in the CRA refers only to a civil action in court, such an interpretation is not supported by the statutory language of the CRA as a whole and the principles of statutory interpretation.

Subsection 102(a)(1) of the CRA provides that: "In an action brought by a complaining party under section 706 or 717 of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-5) against a respondent who engaged in unlawful intentional discrimination . . . the complaining party may recover compensatory and punitive[4] damages . . . in addition to any other relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent." Subsection 102(a)(2) provides that: "In an action brought by a complaining party under the powers, remedies, and procedures set forth in . . . section 505(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. § 794a(a)(1)) . . . against a respondent who engaged in unlawful intentional discrimination . . . under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. § 791) and the regulations implementing section 501, or who violated the requirements of section 501 of the Act or the regulations implementing section 501 concerning the provision of a reasonable accommodation . . . the complaining party may recover compensatory and punitive damages . . . from the respondent."

Subsection 102(a)(2), cited above, expressly permits a complaining party to recover damages for violations of the Rehabilitation Act through the federal sector regulations and procedures providing administrative relief under the Rehabilitation Act. Accordingly, the term "action" in this subsection includes both court actions and the administrative process.[5] This language clearly provides compensatory damages in the administrative process for actions brought under the Rehabilitation Act. Although subsection 102(a)(1) does not make reference to the federal sector regulations implementing the Civil Rights Act of 1964, there is nothing in the legislative history of the CRA to indicate that Congress intended to treat the individuals protected by these two statutes differently. The Commission finds that the most plausible reason for the failure of subsection 100(a)(1) to mention the administrative process is that Section 717 of the Civil Rights Act of 1964 explicitly provides for an administrative complaint process, while section 501 of the Rehabilitation Act lacks such a provision. The difference in the language of the two subsections is merely a statutory recognition by the drafters of the CPA that the administrative complaint process under the Rehabilitation Act derives from, and is patterned on, the administrative procedure authorized under section 717 of Title VII of the Civil Rights Act of 1964, as amended.

Further support for the conclusion that compensatory damages are recoverable in the administrative process comes from the definition of "complaining party" in subsection 102(d)(1)(A).[6] That subsection defines the term "complaining party" for purposes of section 102 as follows:

> The term "complaining party" means—in the case of a person seeking to bring an action under subsection (a)(1), the [EEOC], the Attorney General, or a person who may bring an action or proceeding under title VII of the Civil Rights Act of 1964. . . .[7]

Complaining party is similarly defined in section 102(d)(1)(B) for persons bringing an "action or proceeding" under the Rehabilitation Act or the Americans with Disabilities Act.

The definition of complaining party provided by subsection 102(d)(1)(A) relates directly back to subsection 102(a)(1) and expressly includes within the group of persons bringing an "action" under subsection 102(a), any person who may bring an action or proceeding under Title VII. Complaining party, as defined, is consistent with subsection 102(a)(2). The definition of a complaining party defines the scope of subsection 102(a)(1) to provide complainants with an option to pursue their damage remedy in either an "action or proceeding."

It is a cardinal principle of statutory interpretation that courts are required to give effect to every clause and word of a statute, if possible. *See United States v. Menasche*, 348 U.S. 528 (1955); *R.E. Dietz Corp. v. United States*, 939 F.2d 1, 5 (2d Cir. 1991). When read together, subsections 102(a)(1), 102(a)(2), and 102(d) permit a complaining party under Title VII or the Rehabilitation Act to obtain compensatory damages in either an action or proceeding. The plain meaning of the term "proceeding" includes administrative proceedings.[8]

The Supreme Court's decision in *New York Gaslight Club v. Carey*, 447 U.S. 54 (1980), is instructive as to the meaning of the term "proceeding" as it is used by Congress. In that case the Court addressed for the first time issues that arise when administrative proceedings are used to enforce civil rights. The Court authorized an award of attorney's fees in federal court litigation for work performed in State administrative proceedings. The Court focused on the requirement in Title VII that complainants first pursue state administrative remedies before filing an action in federal district court. Having successfully enforced her rights at the State administrative level, the plaintiff sought recovery of attorney's fees in federal court under Title VII's fees provision. The Court decided that use of the words "action or proceeding" included in Title VII's fee provision indicated Congress' intent to authorize fee awards for work done in administrative proceedings and, therefore, the availability of attorneys' fees would not depend on whether the claimant succeeded at the administrative level or prevailed in court.[9] Thus, Congress' use of the words "or proceeding" was more than surplusage.

The holding in *New York Gaslight Club* that the words "or proceeding" is more than surplusage supports the conclusion that the use of the same words in section 102(d)(1)(A) is an expression of Congress' intent to provide damages in the administrative process. Had Congress intended to require complainants to file civil actions to recover damages, it simply could have used language in subsections 102(a)(2) and 102(d) identical to that in subsection 102(a)(1) and not mentioned other proceedings and actions under the regulations.

Another relevant concern of the Supreme Court in *New York Gaslight Club* was that if fees were not awarded for conclusive administrative proceedings, the result would be the filing of unnecessary lawsuits. The existence of an incentive to file a complaint in federal court, such as the availability of a fee or damage award, would ensure that almost *all* Title VII complainants would abandon the administrative process for the courts as soon as possible.

For the foregoing reasons, the Commission finds that in the context of an offer of full relief, the agency's offer must address compensatory damages where the complainant shows some objective evidence that he or she has incurred compensatory damages, and that the damages are related to the alleged unlawful discrimination. The agency need only consider the issue of compensatory damages for alleged discriminatory conduct occurring on or after November 21, 1991. Because the appellant in this case made a claim for damages related to the alleged discriminatory conduct of the agency, the agency should have requested from the appellant some objective proof of the alleged damages incurred, as well as objective evidence linking those damages to the adverse actions at issue, prior to making its offer of full relief. Therefore, appellant was under no obligation to accept the agency's offer, and the agency's decision to cancel the complaint for failure to accept a certified offer of full relief was improper and is VACATED. *See* 29 C.F.R. § 1614.107(h). The complaint is hereby REMANDED to the agency for further processing from the point processing ceased in accordance with this decision and applicable Regulations.

Conclusion

Based upon a review of all the evidence of record, the decision of the Equal Employment Opportunity Commission is to VACATE the agency's final decision, which cancelled appellant's complaint for failure to accept an offer of full relief. The complaint is hereby REMANDED to the agency for further processing in accordance with this decision and the Order below.

Order

The agency is ORDERED to process the remanded allegations in accordance with 29 C.F.R. § 1614.108. The agency shall acknowledge to the appellant that it has received the remanded allegations within thirty (30) calendar days of the date this decision becomes final. The agency shall issue to appellant a copy of the investigative file and also shall notify appellant of the appropriate rights within one hundred fifty (150) calendar days of the date this decision becomes final, unless the matter is otherwise resolved prior to that time. If the appellant requests a final decision without a hearing, the agency shall issue a final decision within sixty (60) days of receipt of appellant's request. A copy of the agency's letter of acknowledgement to appellant and a copy of the notice that transmits the investigative file and notice of rights must be sent to the Compliance Officer as referenced below.

Implementation of the Commission's Decision

[See ICD, p. I-403.]

[See RR-A, FEOR pp. I-401-402 for Statement of Review Rights.]

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[1] The Commission has determined that compensatory damages are available for alleged discriminatory conduct occurring on or after November 21, 1991 (the effective date of the CRA). See Commission Policy Guidance on Application of Damages Provisions of the Civil Rights Act of 1991 to Pending Charges and Pre-Act Conduct (December 27, 1991).

[2] The Commission notes appellant's request for an apology; however, the Commission has held that an apology is not a necessary element of full relief. *See Shirley Hoskinson v. United States Postal Service*, EEOC Request No. 05880752 (February 2, 1989). Furthermore, a further assurance of no future harassment by any particular official, which the agency is already obligated by law to ensure, is not necessary. *Reynaldo Gonzalez v. Clayton Yeutter, Secretary, Department of Agriculture*, EEOC Request No. 05910801 (September 6, 1991) [92 FEOR 3083].

[3] Congress extended Title VII's protection to federal employees in 1972. "The provisions adopted by the committee will enable the Commission to grant full relief to aggrieved employees, or applicants. . . . Aggrieved employees or applicants will also have the full rights available in the courts as are granted to individuals in the private sector under title VII." S. Rep. No. 415, 92d Cong., 1st Sess. 16 (1971).

[4] Subsection 102(b)(1) prevents complainants from seeking punitive damages against a government, government agency or political subdivision.

[5] During the Senate debate on the CRA, an amendment concerning Congress' exemption from civil rights laws was considered. That amendment used the term "action" to mean administrative action. 137 Cong. Rec. Section 15350 (daily ed. Oct. 29, 1991).

[6] Under accepted canons of statutory interpretation, statutes must be interpreted as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous. *Boise Cascade Corp. v. U.S.E.P.A.*, 942 F.2d 1427, 1432 (9th Cir. 1991) (quoting Sutherland Stat. Const. §§ 46.05, 46.06 (4th ed. 1984)). Specific words within a statute may not be read in isolation of the remainder of that section or the entire statutory scheme. *Sutton v. United States*, 819 F.2d 1289, 1293 (5th Cir. 1987).

[7] CRA, Section 102(d)(1)(A).

[8] The term "proceeding" is defined as including both juridical business before a court as well as administrative proceedings before agencies and tribunals. Black's Law Dictionary 1083 (5th ed. 1979).

[9] 447 U.S. at 61-62, 66.

JUL 26 1979

Dear Mr. Newman:

In your letter of June 25, 1979, you question whether rural carriers are entitled to light duty assignment in the clerk craft under Article XIII of the 1978 National Agreement with the APWU and other national Postal Unions.

The Rural Carriers did not participate in the referenced 1978 National Agreement and therefore are not entitled to light duty assignments under Article XIII of that agreement. On the other hand such assignments made pursuant to previous National Agreements in which the Rural Carriers did participate, would continue until terminated.

With respect to the two light duty assignments in Spring, Texas, referred to in your letter, we have been advised there are no light duty assignments in Spring, Texas. There is one limited duty assignment; Kathleen Tramm, a rural carrier, was injured on duty and placed on limited duty as a clerk effective January 20, 1979. She is still on limited duty as a clerk but was converted to city carrier on June 16, 1979.

Such limited duty assignments are not made pursuant to Article XIII but pursuant to our mutual obligations under the Federal Employee's Compensation Act to return employees with job related injuries to duty subject to their medical restrictions.

Sincerely,

(signed) James C. Gildea

James C. Gildea
Assistant Postmaster General
Labor Relations Department

Forrest M. Newman, Director
Industrial Relations
American Postal Workers Union, AFL-CIO
817 14th Street, N. W.
Washington, D. C. 20005

Mr. Gildea (2)
bcc: Mr. Crowe
Mr. Mitchell

The parties further agree that the limitations relative to arbitrator contact listed above are in addition to those expressed in the parties' Conditions of Appointment for Arbitrators.

Anthony J. Vegliante
Manager
Grievance & Arbitration
U.S. Postal Service

Moe Biller
President
American Postal
Workers Union,
AFL-CIO

11/21/95
Date

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

September 23, 1988

MEMORANDUM FOR REGIONAL DIRECTORS AND FIELD DIRECTORS
HUMAN RESOURCES

GENERAL MANAGER
HEADQUARTERS PERSONNEL DIVISION

Subject: MSPB Precedent Affecting Light Duty

On April 6, 1988, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) issued a decision in Horner v. Schuck and Washington, et al., 843 F.2d 1368 (Fed. Cir. 1988), 88 FMSR 7013. The court affirmed the decision of the Merit Systems Protection Board (MSPB) that the placement of veteran preference eligible full-time regular employees who are in light duty assignments in a non-pay, non-duty status for a portion of the day whenever work is not available within their job restrictions constitutes a furlough. The effect of this decision is that the Postal Service may not work full-time regular veteran preference eligible employees on light duty assignments who are able to work for 8 hours a day or 40 hours a week for less than 8 hours a day or 40 hours a week without incurring possible liability in the event that an appeal is filed with the MSPB. Part-time flexible employees would be entitled only to their minimum guarantee under the contract.

Where an employee's own physician limits his or her time at work to less than 8 hours per day or less than 40 hours per week, that employee would not be considered furloughed when limited to the hours of work established by that employee's physician. In addition, employees may be permitted to voluntarily use sick leave, annual leave, or leave without pay for a portion of the day for which there is no work available within his or her medical restrictions.

The Federal Circuit's decision will be applied by the MSPB to any appeals which are filed by employees on light duty assignments who claim that they have been furloughed. The following courses of action may provide a means for offices to mitigate the effect of this decision.

o Requests for Light Duty

Careful consideration should be given to requests for light duty from all employees. Article 13 places certain obligations upon the employee requesting the light duty assignment, i.e., that the request for temporary light duty be in writing, that a supporting medical statement or certificate accompany requests for either temporary or permanent light duty, etc. See Article 13.2.A and B. Employees making requests for light duty should be expected to comply with these requirements. Further, verification of the information provided should be made prior to issuing a decision on the request.

o Offer of Light Duty Assignment

The decision on the request for light duty must be in writing to the employee. When considering requests for light duty from veteran preference eligibles who may appeal to the MSPB and those who are not preference eligibles, available hours should be given to the veteran preference eligible over a non-veteran preference eligible, regardless of seniority.

If the decision is to deny the request for the light duty assignment, the employee must be advised of the reasons why the request has not been granted. Where the decision is to approve the light duty assignment, the employee should be advised of the nature of the assignment and that there is no guarantee of any number of hours of work per day or per week. The workweek of a light duty employee is based on the needs of the Service and may depart from the normal workweek as defined in the hours of work portions of the various collective bargaining agreements.

A sample letter has been enclosed for use in advising employees that their requests for a light duty assignment have been approved. You will note that where the offer is made to a veteran preference eligible employee with one year of current continuous service in the same or similar position, the letter provides for the acknowledgment by the employee that he or she understands and accepts the conditions of the light duty assignment. This acknowledgment should be signed and returned to the office prior to the employee commencing the light duty assignment.

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

June 4, 1997

Dear Mr Bazylewicz:

Pursuant to the provisions of the national agreement this is to appeal to arbitration the parties dispute over the interpretation of Article 13 when employees request accommodation within their assigned duties. Your response of May 13, 1997 does not address the interpretive issue that is raised. As presented in the union's correspondence of April 1, 1997 the union interprets the contract as employee request for accommodation in their current duty assignment are not governed by request for light duty under Article 13.

In the facts given rise to this case, the employees were physically "able to perform their assigned duties" and their request for accommodation was governed by the Pregnancy Discrimination Act. It is only after the employer has determined that reasonable accommodation in the employees duty assignment cannot be made does further request by the employee for a "light duty" assignment fall under the provisions of Article 13 of the national agreement.

The union request that employees with temporary disabilities who have requested "reasonable accommodation" which have been denied based upon the unavailability of "light duty" assignments be made whole.

Sincerely,

William Burrus
Executive Vice President

Pete Bazylewicz, Manager
Grievance & Arbitration
Labor Relations
475 L'Enfant Plaza, SW
Washington, DC 20260

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

May 13, 1997

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

Dear Bill:

This letter is in response to your correspondence dated April 1, 1997 concerning the application of Article 13, "Assignment of Ill or Injured Regular Workforce Employees". Specifically, you allege that management at the Memphis BMC has adopted a policy of denying employees the opportunity to work their bid assignments and considers their request for accommodation as a request for light duty. You have not provided any evidence that there is such a management policy at the Memphis BMC.

The Union interprets the provisions of Article 13 of the National Agreement as requiring the accommodation of employees in those circumstances within their present duty assignment.

Article 13.4(A), states clearly that 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. There is no mention of requirement within their present duty assignment. Please specify the provision of the agreement that supports the Union's position.

If there are any questions concerning this matter, you may contact Barbara Phipps of my staff at (202) 268-3834.

Sincerely,

Peter A. Sgro
Acting Manager
Contract Administration APWU/NPMHU

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

April 1, 1997

William Burrus
Executive Vice President
(202) 842-4246

Dear Mr. Scro:

Pursuant to the terms of the national agreement, this is to initiate a step 4 grievance over the interpretation of the employer's obligations under Article 13 the "Assignment of Ill or Injured Regular Workforce Employees". By previous letter I have attempted to obtain the employers interpretation of the national agreement in circumstances when employees are denied consideration for light duty. Your written response advises that it is not your intent to provide the employer's interpretation as applied to the cited circumstances.

It is apparent that you are not familiar with the provisions of Article 15, Section 4 of the national agreement which enables the union to initiate an issue at the national level to determine whether or not there is an interpretive dispute between the parties. As required by these provisions, following are the facts giving rise to the dispute and the precise interpretive issue to be decided.

Management at the Memphis BMC has adopted a policy of denying employees the opportunity to work their bid assignments and considers their request for accommodation as a request for light duty. This policy requires the employees to exhaust their 12 weeks of alloted Family and Medical Leave prior to their period of incapacity.

The circumstances giving rise to this inquiry are three pregnant employees who are physically capable of performing their assigned duties with accommodations normally applied to pregnancy. Local management has arbitrarily denied each request for accommodation, applying their circumstances as request for light duty.

The union interprets the provisions of Article 13 of the national agreement as requiring the accommodation of employees in those circumstances within their

present duty assignment. Such requests do not constitute request for temporary reassignment to light duty and the employer's decision is whether or not reasonable accommodations can be applied to the employees' circumstances.

Please respond to the employer's interpretation of Article 13 as applied to the above. Thank you for your attention to this matter.

Sincerely,

William Burrus
Executive Vice President

Peter Scro,Acting Manager
USPS Labor Relations
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb
opeiu#2
afl-cio

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

FEB 24 1984

Mr. James W. Lingberg
National Representative-at-Large
Maintenance Craft Division
817 14th Street, N. W.
Washington, D. C. 20005-3399

Dear Mr. Lingberg:

Recently you met with Frank Dyer in prearbitration discussion of H1C-NA-C 65. The question in this grievance is the delay in returning an employee to duty after an absence of 21-days or more of extended illness or injury.

It was mutually agreed to full settlement of this issue as follows:

1. To avoid undue delay in returning an employee to duty, the on-duty medical officer, contract physician, or nurse should review and make a decision based upon the presented medical information the same day it is submitted.

   Normally the employee will be returned to work on his/her next work day provided adequate medical documentation is submitted within sufficient time for review.

2. The reasonableness of the Service in delaying an employee's return beyond his/her next work day shall be a proper subject for the grievance procedure on a case-by-case basis.

Please sign and return the enclosed copy of this letter acknowledging your agreement with this settlement, withdrawing H1C-NA-C 65 from the pending national arbitration listing.

Sincerely,

W. E. Henry Jr.
William E. Henry, Jr.
Director
Office of Grievance
and Arbitration
Labor Relations Department

James W. Lingberg
James W. Lingberg
National Representative-at-Large
Maintenance Craft Division
American Postal Workers Union,
AFL-CIO

Revisions to ELM, P-11, and EL-806

RETURN TO DUTY AFTER EXTENDED ILLNESS OR INJURY

Personnel Operations Handbook, P-11, Section 342.1; *Health and Medical Service Handbook*, EL-806, Section 160; and Employee and Labor Relations Manual (*ELM*), Chapter 860, is revised as follows:

P-11

342 Return to Duty After Extended Illness or Injury

342.1 Certification After *21 Days*

Employees returning to duty after 21 days or more of absence due to illness or serious injury must submit medical evidence of their ability to return to work, with or without limitations. A medical officer or contract physician evaluates the medical report and, when required, assists in employee placement to jobs where they can perform effectively.

EL-806

160 Fitness For Duty

161.1 Authority

A fitness-for-duty examination will be required when it is necessary to determine whether or not an employee is able to continue working or may return to his job after an absence due to illness or injury. Any absence for illness or injury over *21 days* requires a medical clearance from the treating physician to the responsible medical officer.

ELM

864.3 Physical Examinations—Fitness for Duty

Delete .34.

Add new Section 864.4 Return to Duty After Extended Illness or Injury.

.41 Certification After *21 days*.

Employees returning to duty after 21 days or more of absence due to illness or serious injury must submit medical evidence of their ability to return to work, with or without limitations. A medical officer or contract physician evaluates the medical report and, when required, assists in employee placement to jobs where they can perform effectively.

—Employee Relations Dept., 1-26-84.

Perishable Live Plant Shipments

To ensure that the Postal Service retains this important parcel volume, all facilities should be alert to the need to handle perishable live plant shipments within established service standards. The greatest volume of such shipments occurs from mid-February through April. These parcels, which originate from horticultural nurseries around the country, contain plants with bare roots and bulbs that are highly sensitive to climatic changes. Any extended exposure to temperature extremes could result in damage to the plants.

Because of the short shelf life of these plants, the shipments should be protected from extreme heat or cold and delivered as soon as possible following entry and processing.

—Customer Services Dept., 1-26-84.

Printed Stamped Envelopes

New procedures for ordering printed stamped envelopes were announced in Postal Bulletin 21435 (12-8-83), to be effective December 24.

Some post offices are not following those instructions and continue to send Forms 3203, *Order for Printed Stamped Envelopes*, without funds to the Stamped Envelope Agency. The Agency is taking exceptional measures to handle those orders.

Please review the procedures outlined in the bove referenced Postal Bulletin. Postmasters should take necessary steps, including notice to stations and branches, to make certain all window personnel comply with the new procedures.

—Customer Services Dept., 1-26-84.

IMM Revision

International Mail—Mexico

The Mexican postal authorities recently advised that an import permit is required when the value of a package exceeds 5,000 Mexican pesos. Mailers should be advised that addressees must obtain an import permit when that value is exceeded. This permit requirement is applicable to gift packages and commercial shipments.

Please make a write-in change to the Parcel Post Prohibitions and Restrictions section, Observation number 2, in the individual country listing for Mexico in the International Mail Manual (*IMM*).

This change will be incorporated in a future revision to the IMM.

—Rates & Classification Dept., 1-26-84.

DMM Revision

Address Card Dimensions

Effective immediately, Domestic Mail Manual (*DMM*), Section 945.3, paragraph *a* is changed to read:

a. *Size.* All cards must be standard card stock and identical in size. The cards must be within the following dimensions: Length: *5 inches to 8 5/16 inches* and Height: *2 1/4 inches to 4 1/4 inches.* It is recommended that all cards be the size of a standard 80-column computer card (i.e., 7 5/16 inches in length by 3 1/4 inches in height).

—Delivery Services Dept., 1-26-84.

U.S. Department of Labor

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

DEC 4 1992

File Number:

William P. Sims Jr. President
California American Postal Workers
Union AFL-CIO
3120 University Avenue
San Diego, California 92104

Dear Mr. Sims:

I am writing in reply to your letter of November 20 in which you posed a series of questions. Below, I have provided the answers.

There are no annotations, codes, or any identifying marks of any kind, type, or description that denote materials such as video tapes or investigative memorandums or other reports or materials that may pertain to the case file. It is true that reports generated by investigative bodies, including the Postal Inspection Service, are considered confidential information if they are is so labeled by the investigative body, and may not be released without the consent of the furnishing agency, primarily because the information is considered the property of the other agency. However, in recent years, the Office of Workers' Compensation Programs (OWCP) has informed Federal agencies of its position that any evidence, including investigative materials, that they want OWCP to use in arriving at a decision on a claim becomes part of the case record and therefore becomes discloseable by OWCP. If any agency still submits materials labeled confidential, Chapter 2-300, section 7-d, of the FECA Procedure Manual applies and the information is kept separated from the case file; however such material is not considered in OWCP's decision.

A free copy of the FECA Procedure Manual index has been provided to your National Office in Washington, D.C. Additional copies may be purchased for $7.00. Enclosed, you will find the copies of the three Employees' Compensation Appeals Board Decisions you requested.

I trust you find the above responsive to your concerns.

Sincerely,

Thomas M. Markey
Director, Federal
Employees' Compensation

Enclosures

CALIFORNIA
AMERICAN POSTAL WORKERS UNION
AFL-CIO
3120 University Avenue • San Diego, CA 92104 • Phone (619) 282-6863

William P. Sims
President

Kenneth G. Floyd
Vice President

November 20, 1992

FREEDOM OF INFORMATION ACT REQUEST

Tom Markey
Director FEC
Office of Worker's Compensation Programs
200 Constitution Avenue, NW
Washington, DC 20210

Dear Mr. Markey,

I am requesting answers to the below listed questions. Presently, I have a case at Hearing and Review. I need the answers in order to determine appropriate action on the case.

1. Are there annotation(s), code(s) or any identifying marks entered into the computerized Federal Employee Compensation System (FECS) that denote materials such as video tapes or investigative memorandums or other reports or materials that may pertain to the case file but not be maintained in the hard copy case file?

2. Are such annotations, codes or other identifying marks also placed in or on the hard copy case file, jacket or CA-800?

3. If there are such annotations, codes or other identifying marks placed in the FECS or in or on the hard copy case file, are they uniform office wide or do they change from district office to district office?

4. Under section 2-300, 7-d of the FECA Procedure Manual, does the office consider reports generated by the U.S. Postal Inspection Service to be "confidential information as described by the Privacy Act?" This includes all reports known as investigative memorandums or by any other name.

5. If the answer to question 4 is no, would such Postal Inspection Reports fall under FECA procedure manual, paragraph 2-300, 7-c?

Under the Freedom of Information Act I request a copy of the FECA Procedure Manual index. Also, please provide a copy of the below listed ECAB decisions:

Edward T. Lowery	8 ECAB 745	
Virgil Hilton	DKT 85-147	8-4-86
Virgil Hilton	DKT 85-1971	8-26-86

Thank you for your cooperation in this matter.

Sincerely,

William P. Sims, Jr.
President

WPS/dd

cc: file

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

March 23, 1977

MEMORANDUM TO: Regional Directors,
Employee and Labor Relations
(All Regions)

SUBJECT: Article XIII - Permanent Reassignment of Ill or Injured Regular Work Force Employees

The Postal Service has reexamined its position concerning the meaning of Article XIII, B.2.A pertaining to who shall bear the cost of the physical examination referred to therein when the employee requesting permanent reassignment to light duty or other assignment is directed to be examined and certified by a physician of the installation head's choice. The Postal Service will, henceforth, pay the designated physician's bill for such physical examination. However, the right is reserved to the installation head to determine when such examinations are appropriate and necessary and every employee request shall not automatically trigger the examination process at Postal Service expense.

The policy stated herein shall be applied to pending grievances which have not been previously settled or extinguished by failure to meet procedural or timeliness requirements of the National Agreement.

James C. Gildea
Assistant Postmaster General
Labor Relations Department

cc: Gen'l. Mgrs., Labor Relations
(All Regions)

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

April 28, 1999

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

Dear Bill:

This is in response to your March 17 letter regarding whether a medical restriction from working overtime requires an employee to request light duty under the provisions of Article 13.

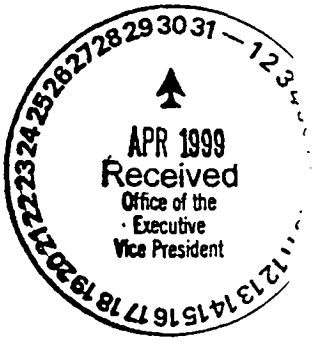
The question of whether the inability to work overtime constitutes light duty was addressed in some detail by Arbitrator Snow in case H1C-5K-C 24191. I refer you to that arbitration award for a complete discussion on the subject. However, the most relevant portion of the award reads as follows:

> An inability to work overtime does not necessarily prohibit an employee from performing his or her normal assignment. Accordingly, such an individual working with such a restriction is not necessarily on "light duty." Employees restricted from working overtime may bid on and receive assignments for which they can perform a regular eight hour assignment.

If you have any further questions, please contact Dan Magazu at (202) 268-3825.

Sincerely,

Peter A. Sgro
Acting Manager
Contract Administration (APWU/NPMHU)



475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

March 17, 1999

Dear Mr. Sgro:

Article 13 of the National Agreement provides that "any full-time regular or part-time flexible employee recuperating from a serious illness or injury and temporarily unable to perform the assigned duties, may voluntarily submit a written request to the installation head for temporary assignment to a light duty or other assignment." This employee option is being interpreted as being applicable when an employee is capable of performing his or her normal work assignment, but is medially restricted to the normal 8 hour work day.

The union interprets the agreement that an inability to work overtime does not necessarily prohibit an employee from performing his or her normal assignment and an individual working with such restriction is not required to request light duty. Employees restricted from working overtime may bid on and receive assignments for which they can perform a regular eight-hour assignment.

Please respond as to the employer's interpretation regarding the above.

Sincerely,

William Burrus
Executive Vice President

Mr. Peter Sgro
Labor Relations
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

June 18, 1996

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

Dear Bill:

Recently, you and Frank Jacquette, of my staff, had conversation regarding application of the September 21, 1987, Memorandum of Understanding (MOU) on the bidding rights of employees on light or limited duty. You indicated that you have been made aware of situations where required medical documentation was not being obtained and given consideration prior to the awarding of bids. We agree that the following clarifies the intent of the parties as to the application of that section of the MOU which addresses medical documentation.

Temporarily disabled employees who submit bids subject to the September 1, 1987, Memorandum and who are declared the senior bidder and are required to provide the initial medical documentation, will not be awarded the assignment in question until the requested medical documentation has been provided. If the employee fails to provide the requested initial medical documentation, he/she shall remain in their current assignment and the next senior bidder shall be declared the senior bidder. If the temporarily disabled employee submits the required medical documentation, is awarded the assignment, but fails to recover within the six month period or the extended six month period, the employee shall become an unassigned regular and the assignment will be reposted for bid. Under such circumstances, the employee shall not be eligible to re-bid the next posting of that assignment.

Sincerely,

Anthony J. Vegliante
Manager
Contract Administration APWU/NPMHU

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

NATIONAL ARBITRATION PANEL

In the Matter of Arbitration between AMERICAN POSTAL WORKERS UNION and UNITED STATES POSTAL SERVICE	GRIEVANT: C. Hernandez POST OFFICE: Phoenix, AZ CASE NO. H1C-5K-C 24191

BEFORE: Professor Carlton J. Snow

APPEARANCES: Mr. Martin I. Rothbaum

Mr. C. J. "Cliff" Guffey

PLACE OF HEARING: Washington, D.C.

DATE OF HEARING: December 11, 1990

POST-HEARING BRIEFS: March 4, 1991

history . . . ." (See, 120 Cong. Rec. 30531, 30534 (Sept. 10, 1974). In other words, the definition of a disability under ADA extends to an individual who had an impairment in his or her life and who, then, recovered from the disability. The new legislation prohibits discrimination against such individuals.

The Americans with Disabilities Act also covers individuals who are "regarded" as having an impairment. In other words, even if an individual has a physical impairment that does not substantially limit a significant life activity, but the person has been treated by the employer as though the person had such a limitation, that person is protected by the legislation. (See, 45 C.F.R. § 84.3(j)(2)(iv) (1989)). That is, the new legislation prohibits discrimination against a person who has been treated by the employer as though the individual were impaired. (See, School Board of Nassau County v. Arline, 480 U.S. 273 (1987)).

It is important to recognize that an impairment under the ADA must not be of any particular duration. In other words, a person with a temporary impairment would be covered by the legislation. One need only establish an impairment that substantially limits a major life activity. It would be possible to establish coverage under the legislation without regard to the duration of the impairment.

If a worker is a qualified individual with a disability, management has an obligation to make a reasonable accommodation for that person. The legislation states that the

employer commits discrimination by

> not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation or business of such covered entity. (See, ADA § 102(b)(5)(A), 104 Stat. 332).

Section 101(9) of the legislation defines "reasonable accommodation" to include job restructuring as well as modifying work schedules. It is clear from the legislative history for the Act that the intent of the drafters was for management to make a determination about a specific accommodation on the basis of particular facts for individual cases. (See, Senate Rep. 116, 101 1st Cong., 1st Sess. 26, 31 (1989)). Legislators expected that management would be flexible with regard to job restructuring and modifying schedules. (See, Sen. Rep. 31). Legislators were clear about the fact that, even if the job restructuring or modified schedule reduced efficiency of an operation, it must be made, unless the inefficiencies could be defined as an "undue hardship" in specific cases.

The point is that the Employer has an obligation to look to laws such as the Americans with Disabilities Act for general guidance about the nature of the Employer's obligation to provide reasonable accommodation for individuals who are impaired. The Employer's obligation extends to all employment decisions. Decisions must be made on a case-by-case basis looking at the facts of each specific problem. The legislation suggests that the Employer must use a problem

solving approach to the matter. This means management must identify aspects of the job that limit the person's performance; determine potential accommodations; evaluate the reasonableness of the alternative accommodations in terms of their impact on the employer; and, assuming no undue hardship on the employer, implement the most effective accommodation. (See, e.g., Davis v. Frank, 711 Fed. Supp. 447 (N.D. Ill. 1989)).

Management's authority to assign overtime work must be understood within the context of laws such as the Americans with Disabilities Act. The Employer's authority to order overtime is not unfettered, and such overtime assignments cannot be viewed as an implied part of every job description. Management's right to require overtime of employes must be understood not only within the context of the parties' contractual agreement but also as informed by relevant legislation. Those sources make clear that the right of management to require overtime does not translate into an implied or inherent qualification for every postal position.

AWARD:

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the Employer violated Article 37 of the National Agreement when, on approximately March 28, 1984, management denied the grievant a bid assignment due to her inability to work overtime. Because the grievant was the senior bidder for the open position and met all published qualification standards, she should have been awarded the position. An inability to work overtime does not necessarily prohibit an employe from performing his or her normal assignment. Accordingly, such an individual working with such a restriction is not necessarily on "light duty." Employes restricted from working overtime may bid on and receive assignments for which they can perform a regular eight hour assignment. The parties did not intend the 1987 Memorandum of Understanding to control individuals who are unable to work overtime but have no other medical restrictions.

The parties shall have sixty days from the date of this report to negotiate a remedy for the specific grievant involved in the case. If they are unable to accomplish this objective, they, by mutual agreement, may activate the arbitrator's jurisdiction any time during the ninety days period following the date of this report or by the request of either party after sixty days have passed from the date of this report but expiring ninety days after the date of this report. Further evidentiary hearings might be necessary

in order for the arbitrator to fashion an appropriate remedy. It is so ordered and awarded.

Respectfully submitted,

Carlton J. Snow
Professor of Law

Date: April 29, 1991

UNITED STATES POSTAL SERVICE
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260

Mr. Cliff J. Guffey
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Re: H0C-3W-C 10914
Class Action
Mid Florida FL 32799

Dear Mr. Guffey:

On February 25, 1993, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management violated the National Agreement by requiring injured employees to sign a "Notice to Injured Worker; Limited Duty Assignment Policy."

During our discussion, we mutually agreed that employees will not be required to sign a notice such as the one referenced in this grievance.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to remand this case to the parties at Step 3 for application of the above understanding.

Time limits were extended by mutual consent.

Sincerely,

David P. Magazu

Daniel P. Magazu
Grievance and Arbitration
Labor Relations

C J Guffey

Cliff J. Guffey
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

Date: 4-7-93

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

August 14, 1987

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

Dear Mr. Burrus:

Enclosed is a Memorandum of Understanding that relates to temporarily physically disqualified employees.

Both parties agreed that this memorandum in no way prejudices the position of either party on any dispute as to accomodation of qualified handicapped employees.

Sincerely,

George S. McDougald

George S. McDougald
General Manager
Grievance and Arbitration
Division

Enclosure

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE AMERICAN POSTAL WORKERS UNION, AFL-CIO
AND
THE UNITED STATES POSTAL SERVICE

It is agreed that the following procedures will be used in situations in which an employee, as a result of illness or injury or pregnancy, is temporarily unable to work all of the duties of his or her normal assignment. Instead, such an employee is working on:

1) light duty,
2) or limited duty;

Or is receiving:

1) Continuation of Pay (COP)
2) or compensation as a result of being injured on the job
3) sick leave
4) annual leave in lieu of sick leave
5) or Leave Without Pay (LWOP) in lieu of sick leave

I. Bidding

A) An employee who is temporarily disabled will be allowed to bid for and be awarded a preferred bid assignment in accordance with the provisions in the various craft articles of the Agreement, or where applicable, in accordance with the provisions of a local Memorandum of Understanding, provided that the employee will be able to fully assume the position within six (6) months from the time at which the bid is submitted.

B) Management may, at the time of submission of the bid or at any time thereafter, request that the employee provide medical certification indicating that the employee will be able to fully perform the duties of the bid-for position within six (6) months of the bid. If the employee fails to provide such certification, the bid shall be disallowed, and, if the assignment was awarded, the employee shall become an unassigned regular and the bid will be reposted. Under such circumstances, the employee shall not be eligible to re-bid the next posting of that assignment.

C) If at the end of the six (6) month period, the employee is still unable to fully perform the duties of the bid-for position, management may request that the employee provide new medical certification indicating that the employee will be able to fully perform the duties of the bid-for position within the second six (6) months after the bid. If the employee fails to provide such new certification, the bid shall be disallowed and the employee shall become an unassigned regular and the bid will be reposted. Under such circumstances, the employee shall not be eligible to re-bid the next posting of that assignment.

D) If at the end of one (1) year from the submission of the bid the employee has not been able to fully perform the duties of the bid-for position, the employee must relinquish the assignment, and would then become an unassigned regular and not be eligible to re-bid the next posting of that assignment.

E) It is still incumbent upon the employee to follow procedures in the appropriate craft articles to request notices to be sent to a specific location when absent. All other provisions relevant to the bidding process will also apply.

F) If the bid is to an assignment that has other duties or requirements more physically restrictive or demanding than the employee's current assignment which, at the time of bidding, the employee cannot perform as a result of temporary physical restrictions, the employee's bid will not be accepted.

G) If the employee is designated the senior bidder for an assignment which requires a deferment period, the employee must be physically capable of entering the deferment period at the time of the bid and completing it within the time limits set forth in the applicable provisions of the National Agreement. Further, if the employee qualifies during the deferment period the employee must be capable of immediately assuming the duties of the assignment in accordance with all the provisions set forth in this Memorandum of Understanding. In accordance with this provision, if the assignment requires the demonstration of a skill(s), the employee must be able to demonstrate the skill(s) on the closing date of the posting.

II. Higher Level Pay

Employees who bid to a higher level assignment pursuant to the procedures described in the preamble and Part I, Bidding, above, will not receive higher level pay until they are physically able to, and actually perform work in the bid-for higher level position.

Sincerely,

George S. McDougald
General Manager
Grievance and Arbitration Division
Labor Relations Department
United States Postal Service

William Burrus
Executive Vice President
American Postal Workers Union, AFL-CIO

9-1-87
DATE

American Postal Workers Union, AFL-CIO
1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

September 21, 1987

TO: Resident Craft Officers and Business Agents

SUBJECT: Memorandum of Understanding
(Physically Handicapped Employees)

I am enclosing a copy of the recently signed agreement permitting light and limited duty employees as well as employees on maternity leave or other medical leave to bid for vacant assignments. The basic protections of the agreement are as follows:

1) The agreement does not waive or resolve the question of the USPS' obligation to modify assignments to accommodate qualified handicapped employees. Employees who will not recover from medical disabilities should not be denied the opportunity to bid and be awarded an assignment. Appeals from denial of such rights should be processed under Article 2 or through EEO.

2) Employees bidding are not required to submit medical certification unless specifically requested by management and such request may be made once at the time of the bid or during the initial 6 months and once during the second 6 months.

3) Employees declared senior bidder and meet any prerequisite skills required will be declared the successful bidder and placed in the new assignment even though the employee's medical condition may prevent physical placement into the duties of the new assignment. In such circumstances the employee will continue on light or limited duty, or on leave pending recovery; either way the employee will be awarded the new assignment provided that a medical statement has been provided, if requested.

4) This agreement does not protect the right to bid to a position that requires physical activity more

demanding than the specific duties of the current position that the employee cannot perform due to medical restrictions. Only those duties of the current assignment that are directly related to the medical limitations can be used for consideration of "more physical restrictive or demanding."

5) If the assignment requires a deferment period the employee must train and qualify within the required time frame and must submit medical documentation as requested within the first and/or second 6 month period.

6) Employees designated successful bidder to higher level positions will continue to receive the former rate of pay until they begin performing the higher level duties. Once an employee begins receiving the higher level pay, all subsequent leave is paid at the higher level.

Yours in union solidarity,

William Burrus
Executive Vice President

WB:rb
opeiu#2
afl-cio

Enclosures

MAR 28 1988

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4107

Dear Mr. Burrus:

This is in response to your letter of March 15 regarding an Equal Employment Opportunity Commission ruling on partially handicapped employees and their placement in the proper level and step they would have attained had they not had an on-the-job injury.

It is my understanding that the Office of Personnel Management has issued a revision to 5 CFR, Part 353, which concerns restoration rights of employees injured on the job which was effective February 16. Furthermore, the revision only effects those employees who return to employment on or after February 16.

As a result of the OPM revisions, the U.S. Postal Service issued directives to the field advising them of the changes to the law (copy attached). The issue of placement into the proper level and step is appropriately addressed in the directive.

As noted in the directive, subsequent changes will be made to the Employee and Labor Relations Manual, Chapter 546.142, reflecting those revisions in the near future.

Should you have any further questions regarding the foregoing, please contact Harvey White at 268-3831.

Sincerely,

(signed) Joseph J. Mahon, Jr.

Joseph J. Mahon, Jr.
Assistant Postmaster General

Attachment

American Postal Workers Union, AFL-CIO
1300 L Street, NW, Washington, DC 20005

March 15, 1988

William Burrus
Executive Vice President
(202) 842-4246

Dear Mr. Mahon:

The Equal Employment Opportunity Commission has ruled in Case No. 101-84-X-0020 (Agency No. 5-1-0691-3) that partially handicapped employees returning to duty are entitled to placement in the step and level they would have obtained, but for the on-the-job injury.

This communication is to inquire as to the Postal Service's intent to amend its regulations on this subject to conform with the Decision and to adjust the pay of similarly situated employees who have not presently reached the top step and are being compensated at a salary below that which is required by law.

Please advise as to the intent of the Postal Service.

Sincerely,

William Burrus
Executive Vice President

Joseph Mahon
Asst. Postmaster General
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

WB:rb

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

Robert H. Jorgensen,
Appellant,

v.

United States Postal Service,
Agency.

Appeal No. 01852973
Agency No. 5-1-0691-3
Hearing No. 101-84-X-0020

DECISION

INTRODUCTION

On July 30, 1985, Robert H. Jorgensen (hereinafter referred to as appellant) initiated an appeal to the Equal Employment Opportunity Commission from the final decision of the United States Postal Service (hereinafter referred to as the agency) issued July 10, 1985 concerning appellant's equal opportunity complaint based on physical handicap (back injury) in violation of Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §791.[1] The appeal is accepted by this Commission in accordance with the provisions of EEOC Order No. 960, as amended.

[1]Appellant initially raised this allegation before the Merit Systems Protection Board (MSPB). In Robert Jorgensen v. U.S. Postal Service, MSPB No. SE03538110038 (October 26, 1981) the Board found that it did not have jurisdiction over appellant's allegations. The Board further commented that while the agency fulfilled its obligation to restore appellant, his claim did not address the issue of restoration, per se. In his appeal to the MSPB, appellant contended that he was entitled to a higher salary and that he was better suited to a letter carrier position. On October 25, 1982 the Commission denied consideration of a petition for review of the MSPB decision. However, the Commission noted, in part, that appellant was not foreclosed from raising the allegation in a complaint of discrimination under 29 C.F.R. §1613.201 et seq. See Robert Jorgensen v. U.S. Postal Service, EEOC Petition No. 03820029 (October 25, 1982).

ISSUES PRESENTED

Whether appellant, an injured Distribution Clerk who received compensation benefits for more than one year, was a "qualified handicapped person" when he was reemployed by the agency in a modified Distribution Clerk position which accommodated the lingering effects of his on-the-job injury.

Whether appellant was entitled to be reinstated at the step level he would have attained in the absence of his on-the-job injury.

BACKGROUND

In December 1975, appellant, a Distribution Clerk with the agency, sustained an on-the-job injury to his lower back. As a result of the injury, on May 20, 1976 appellant was awarded compensation by the Office of Workers' Compensation Programs (OWCP), Department of Labor, and was placed on Leave Without Pay (LWOP) status by the agency. Agency records reflect that on September 28, 1977 appellant was awarded disability retirement and separated from the agency. At the hearing before the Complaints Examiner, appellant testified that he was required to apply for disability retirement. However, appellant elected to stay on the OWCP rolls. (Tr. 62).[2]

In 1980 the OWCP referred appellant to the agency for possible reemployment. In October 1980 an agency medical officer examined appellant and pronounced appellant capable of returning to work with several specific restrictions designed to avoid further back injuries. An October 30, 1980 job offer was later withdrawn by the agency. However, on March 5, 1981 the agency reissued its job offer for a Distribution Clerk position, modified to fit appellant's work restrictions. Appellant's duties were divided between two stations and included timekeeping duties. Although appellant accepted the offer, he contended that the agency discriminated against him based on his physical handicap in that the agency refused to reinstate appellant at the step level he would have held but for the on-the-job injury.

Following investigation and issuance of a notice of proposed disposition, appellant requested a hearing before a Complaints Examiner. In a January 24, 1985 prehearing statement the agency noted that the Postal Service ultimately pays the OWCP benefits or retirement benefits of partially-recovered employees. Thus, it is in the best interest of the Postal Service to return partially recovered employees to work even if they may be working at considerably less than 100% efficiency.

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[2] See generally Federal Personnel Manual Supplement 831-1, Subchapter S7 (Election Between Retirement Annuity and Compensation for Work Injuries).

At the April 10, 1985 hearing, the agency stipulated that if appellant had returned to work fully-recovered after being off work for more than one year, appellant would have been given credit for the intervening period -- i.e.,[3] appellant would have been reinstated at a higher step level. (Tr. 6-9). An Injury Compensation Specialist testified that appellant performed the duties set forth in the job description which was designed to accommodate his physical restrictions. However, the Specialist testified that appellant did not perform the duties of a "regular Distribution Clerk." (Tr. 29). An MSC Safety Specialist testified that appellant performed timekeeping duties approximately six hours per day and clerk duties in the Box Section for approximately two hours. (Tr. 51). In the opinion of the Specialist, appellant's medical restrictions would not limit the performance of the timekeeping duties.[4] (Tr. 50). Appellant's supervisor in the Box Section testified that appellant was unable to perform several duties of a Box Section clerk. The supervisor recalled that appellant was unable to perform "all the extemporaneous duties which made up that job, other than boxing mail." (Tr. 81).

At the hearing, the agency contended that although appellant was "handicapped" he was not a "qualified handicapped person" in that appellant was unable to perform the essential functions of a regular Distribution Clerk. See EEOC Regulation 29 C.F.R. §1613.702(f). Thus, in the opinion of the agency, appellant was not entitled to the protection of the Rehabilitation Act.[5] The agency further contended that its regulations, which distinguished between fully recovered employees and partially recovered employees with respect to the step level to which an employee is reinstated, are consistent with the

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[3] See also agency's Prehearing Statement dated January 24, 1985. The agency stated in part: "If [appellant] had been rehired as a fully recovered employee he would have been given credit for the intervening period, and thus would have had a higher in-grade step level."

[4] The Complaints Examiner excluded testimony concerning appellant's physical condition subsequent to March 1981. (Tr. 23-24). However, the record reflects that beginning in June 1981, appellant complained of back pain. In August 1981, appellant's duties were changed to eight hours per day of desk work. A fitness-for-duty examination performed in January 1982 disclosed that appellant was physically able to perform the duties assigned to him. A subsequent claim by appellant for compensation was rejected by OWCP in December 1982.

[5] See Employee and Labor Relations Manual, Subchapter 540, Injury Compensation Program. Sections 546.41 and 546.42 ("OPM Regulations" and "Rights and Benefits upon Partial Recovery") EEO Investigative Report, Exhibit #21c.

requirements of 5 U.S.C. §8151.[6] Specifically, the agency relied on the Office of Personnel Management's March 6, 1979 answer to a question posed by the agency:[7]

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[6]Chapter 81-Compensation for Work Injuries

5 U.S.C. §8151. Civil service retention rights

(a) In the event the individual resumes employment with the Federal Government the entire time during which the employee was receiving compensation under this chapter shall be credited to the employee for the purposes of within-grade step increases, retention purposes, and other rights and benefits based upon length of service.

(b) Under regulations issued by the Office of Personnel Management-

(1) the department or agency which was the last employer shall immediately and unconditionally accord the employee, if the injury or disability has been overcome within one year after the date of commencement of compensation or from the time compensable disability recurs if the recurrence begins after the injured employee resumes regular full-time employment with the United States, the right to resume his former or an equivalent position, as well as all other attendant rights which the employee would have had, or acquired, in his former position had he not been injured or disabled, including the rights to tenure, promotion, and safeguards in reductions-in-force procedures, and

(2) the department or agency which was the last employer shall, if the injury or disability is overcome within a period of more than one year after the date of commencement of compensation, make all reasonable efforts to place, and accord priority to placing, the employee in his former or equivalent position within such department or agency, or within any other department or agency.

[7]The Office of Personnel Management, successor to the Civil Service Commission, was assigned the duty to promulgate rules and regulations implementing 5 U.S.C. §8151.

Question 7:

> When a partially injured former employee is restored more than one year after the commencement of compensation benefits, must that employee be placed in the pay grade and step that he would have attained without injury, or is it sufficient to restore the employee to the pay grade and step that he had when he was injured where the pay for that grade and level exceeds what it was at the time of the injury?

Although the agency's question was posed in the alternative, OPM provided the following response:

Answer 7:

> No. The employee may be restored to any position--even one at a lower pay and grade than the one he or she left. However, if and when the employee fully recovers, he or she is entitled to be considered for the position originally held or an equivalent one as prescribed by [5 C.F.R.] Part 353.

The record reflects that in 1980 the Office of Workers' Compensation Programs in the Department of Labor issued a revised edition of a pamphlet entitled Federal Injury Compensation: Questions and Answers About the Federal Employees' Compensation Act. While the agency contends that OWCP's answers to Questions 72 and 73 are relevant, the Commission notes that OWCP's answer to Question 77 is directly on point.[8]

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[8]Federal Injury Compensation: Questions and Answers About the Federal Employees' Compensation Act, U.S. Department of Labor, Employment Standards Administration, Office of Workers' Compensation Programs, Pamphlet CA-550 (Rev. Feb. 1980):

72. If, as a result of an on-the-job injury, an employee returns to work at a lower rate of pay, is he or she entitled to compensation?

> Yes. The employee may receive compensation for the loss of earning capacity resulting from the injury. The compensation rate is two-thirds of the loss of earning capacity if there are no dependents; or three-fourths of the loss if the employee has one or more dependents.

73. How is the wage-earning capacity of a partially disabled employee determined?

(Footnote Continued)

In his Recommended Decision, the Complaints Examiner rejected the agency's argument that appellant was not a "qualified" handicapped employee entitled to the protections of the Rehabilitation Act and applicable EEOC Regulations. Since 75% of appellant's time was devoted to timekeeping duties which appellant was fully able to perform, the Complaints Examiner concluded that appellant was able to perform the essential functions of his position. Assuming, arguendo, that the Box Section clerk position was appellant's "position in question," the Complaints Examiner found that appellant could perform the essential function of a Box Section clerk -- that is, appellant could box mail. Since appellant could perform the essential functions of his position, the Complaints Examiner found that appellant was a "qualified handicapped person" within the meaning of the Rehabilitation Act and applicable regulations.

The Complaints Examiner examined appellant's complaint of handicap discrimination under a disparate treatment analysis. Since it was not disputed

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(Footnote Continued)

> The employee's actual earnings, if any, are studied to see if they fairly and reasonably represent the individual's wage-earning capacity. If they do not, or if the employee has no actual earnings, the OWCP must determine such earning capacity taking into consideration the nature of the injury, the degree of physical impairment, the employee's age, employment qualifications, the availability of suitable employment, and any other factors or circumstances in the employee's case which may affect the capacity to earn wages in his or her disabled condition.

77. Does an injured employee have Civil Service retention rights when injured on the job?

> Yes. The provisions of 5 U.S.C. 8151, administered by the Office of Personnel Management, assure Federal employees, including those of the U.S. Postal Service, who are injured on the job and who have received, or are receiving compensation, that upon their return to Federal employment they will incur no loss of benefits which they would have received but for the injury (or disease). It also permits an injured employee to return to his/her former or equivalent position if recovery occurs within 1 year from the date compensation begins or 1 year from recurrence of that same injury. For those employees whose disability extends beyond 1 year, the employing agency or department is to grant priority in employment to the injured worker, provided application for reappointment is made within 30 days of the date of cessation of compensation.

that partially recovered injured employees were treated differently from fully recovered injured employees with regard to step increases, the Complaints Examiner focussed on the agency's justification for its action. The agency contended that 5 U.S.C. §8151 permitted the disparate treatment in that partially recovered injured employees worked at less than 100 percent efficiency. In considering whether the agency correctly interpreted 5 U.S.C. §8151, the Complaints Examiner considered OPM's March 6, 1979 response to Question 3 posed by the agency. At Question 3 the agency inquired whether 5 U.S.C. §8151(a) applied to "a former employee whose disability is partially overcome more than one year after the commencement of compensation, and who is restored to duty by the employing agency?" OPM responded that "Section 8151(a) provides that an employee who resumes employment with the Federal Government is to be credited with the time during which compensation was received for purposes of rights and benefits based upon length of service. This section applies if the individual is reemployed regardless of whether the employee is fully recovered or partially recovered." (emphasis added).[9]

The agency further relied on a decision by an Arbitrator in U.S. Postal Service v. American Postal Service Union, Grievance Nos. H8C-4A-C-11834, 11772 and 11832 (September 3, 1982) and a dismissal by the MSPB, James Blackburn v. U.S. Postal Service, MSPB No. SF035381104476 (July 30, 1982) (dismissal for lack of jurisdiction). Finally, the agency argued that step increases are not automatic but are based on merit.

In view of the language in 5 U.S.C. §8151(a) to the effect that the entire time during which the employee received workers' compensation benefits shall be credited to the employee for the purpose of within-grade step increases and the OPM's March 6, 1979 interpretation of §8151(a) as applying to partially recovered employees as well as fully recovered employees, the Complaints Examiner recommended a finding that agency regulations which denied step increases to partially recovered employees were in conflict with 5 U.S.C. §8151(a). The Complaints Examiner further recommended a finding that the agency's denial of within-grade step increases for partially recovered employees constituted disparate treatment of a subclass of handicapped persons to which appellant belonged.[10]

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[9] See also September 8, 1987 letter from the Acting Assistant Director for Staffing Policy and Operations, Office of Personnel Management to Director, Office of Safety and Health, United States Postal Service (no basis under 5 U.S.C. §8151 and implementing OPM regulations for denying partially recovered employees within-grade increases).

[10] Relying on EEOC Regulation 29 C.F.R. §1613.604(i) the Complaints Examiner erroneously stated that the Recommended Decision would become a final decision

(Footnote Continued)

The final decision of the agency rejected the Complaints Examiner's recommended finding that appellant was a "qualified handicapped person." Relying on Jasany v. U.S. Postal Service, 755 F.2d 1244 (6th Cir. 1985), the agency stated that reasonable accommodation does not include the elimination of essential functions of a position. Since appellant was unable to perform the normal duties or essential functions of a regular Distribution Clerk, the agency concluded that appellant was not a "qualified handicapped person" as that term is defined in EEOC Regulation 29 C.F.R. §1613.702(f). In the agency's opinion the Complaints Examiner's recommended finding that the appellant could perform the essential functions of a Time and Attendance Clerk position ignored the fact that appellant was reemployed as a Distribution Clerk. Assuming, arguendo, that appellant was a qualified handicapped person, the agency found that the differing treatment accorded fully-recovered employees and partially-recovered employees in terms of within-grade step increases was consistent with 5 U.S.C. §8151. Accordingly, the agency rejected the recommendation of the Complaints Examiner and found that appellant had not been discriminated against based on physical handicap in violation of the Rehabilitation Act.

ANALYSIS AND FINDINGS

The first issue to be addressed is whether appellant is entitled to the protections of the Rehabilitation Act. It is not disputed that appellant is a "handicapped person" as that term is defined in EEOC Regulation 29 C.F.R. §1613.702(a). However, relying on Jasany v. U.S. Postal Service, 755 F.2d 1244 (6th Cir., 1985), the agency contends that appellant is not a "qualified handicapped person" in that, with or without accommodation, appellant cannot perform the essential functions of a regular Distribution Clerk position without endangering his health and safety. In Jasany, the plaintiff was hired primarily to operate the LSM-ZMT machine. Because of a mild case of strabismus, the plaintiff was unable to operate the machine. The Court held that the "post office was not required to accommodate Jasany by eliminating one of the essential functions of his job." Jasany, supra at 1250 (emphasis in original).

The holding of Jasany, supra, is consistent with EEOC Regulation 29 C.F.R. §1613.704(b) in that the "job restructuring" permitted by the regulation does not require the elimination of essential functions of the employee's position. However, Jasany and EEOC Regulation 29 C.F.R. §1613.704(b) are of limited applicability in the instant case in light of the agency's voluntary restructuring of appellant's position.

(Footnote Continued)
calendar days. However, EEOC Regulation 29 C.F.R. §1613.604(i) is only applicable to class action complaints. Pursuant to EEOC Regulation 29 C.F.R. §1613.220(d), the agency had 30 calendar days from date of receipt to reject or modify the Recommended Decision of the Complaints Examiner.

Here, the agency's voluntary offer of reemployment recognized appellant's physical restrictions. Further, the agency agreed to assign duties to appellant which were within his physical limitations. At the hearing, witnesses testified that appellant spent about six hours a day on timekeeping duties. Said duties were within appellant's physical limitations. Appellant was assigned to the Box Section for approximately two hours a day. While he was unable to perform some duties, he was able to box mail, a principal function of the Box Section. While appellant's physical restrictions prevented him from performing all of the the essential functions of a regular Distribution Clerk, the agency's voluntary offer of reemployment modified the duties of a Distribution Clerk position so as to accommodate appellant's physical restrictions. Evidence that appellant's job title was "Distribution Clerk" and that appellant was unable to perform the regular duties of a Distribution Clerk does not remove appellant from the protections of the Rehabilitation Act. In view of the agency's voluntary commitment to assign duties to appellant which were within his physical restrictions as well as appellant's performance of the essential functions of his timekeeping duties and his ability to box mail, the Commission finds that appellant is a "qualified handicapped person" entitled to the protection of the Rehabilitation Act.

In the context of injured employees returning to work more than one year after commencement of compensation, it is not disputed that the agency treats fully-recovered employees more favorably than partially-recovered employees.[11] Thus, the Commission finds that appellant has established a prima facie case of disparate treatment based on physical handicap. Prewitt v. U.S. Postal Service, 662 F.2d 292, 305, n. 19 (5th Cir. 1981). The agency contends that 5 U.S.C. §8151(a), as interpreted by the Office of Personnel Management, authorizes this disparate treatment. Thus, the next issue to be addressed is essentially an issue of law -- namely, whether 5 U.S.C. §8151(a) authorizes the disparate treatment of partially recovered injured employees, thereby limiting the scope of the Rehabilitation Act.

The Federal Employees Compensation Act (FECA), as amended, 5 U.S.C. §8151, sets forth the retention rights of injured or disabled employees of certain Federal government departments and agencies, including the United States Postal Service.[12] The statute provides, in relevant part, that in "the event the

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[11]The agency stipulated that, had appellant returned to work fully-recovered after being off work for over a year, appellant would have received the step increases for the period he was receiving compensation.

[12]The legislative history of FECA reflects that 5 U.S.C. §8151 was added to the Act in 1974. In Senate Report No. 93-1081, the Labor and Public Welfare Committee stated that the amendment made by Section 22 (§8151) assured "injured employees who are able to return to work at some later date that, during their

(Footnote Continued)

individual resumes employment with the Federal Government, the entire time during which the employee was receiving compensation under this chapter shall be credited to the employee for the purposes of within-grade step increases...." (emphasis added). By letter dated March 6, 1979, OPM advised the agency that 5 U.S.C. §8151(a) applied to a former employee whose disability is partially overcome more than one year after the commencement of compensation benefits.

The agency relies on OPM's opinion that a partially recovered employee, who is restored more than one year after the commencement of compensation benefits, "may be restored to any position -- even one at a lower pay and grade than the one he or she left." However, OPM's opinion that a partially recovered employee may be restored to any position, even one that is at a lower pay and grade, is not applicable to the instant case. The record reflects that appellant was restored to the position he previously held, namely, Distribution Clerk, albeit the duties were modified to accommodate appellant's handicap.

Similarly, the agency argues that its interpretation of 5 U.S.C. §8151(a) is consistent with the interpretation given by the Office of Workers' Compensation Programs of the Department of Labor. In a pamphlet entitled "Federal Injury Compensation," OWCP answered questions about FECA. Specifically, the agency relies on OWCP's answers to Questions 72 and 73. The agency appears to argue that since it is theoretically possible to rehire an injured employee at a lower rate of pay, then 5 U.S.C. §8151(a) cannot be interpreted as requiring that a partially-recovered employee be given credit for time on compensation for the purpose of within-grade step increases. However, the Commission notes that OWCP's response to Question 77 is not in conflict with OPM's statement that 5 U.S.C. §8151(a) is applicable to partially recovered employees. OWCP explained that the provision assures Federal employees injured on-the-job that "upon their return to Federal employment they will incur no loss of benefits which they would have received but for the injury (or disease)."

In the agency's January 24, 1985 prehearing statement, the agency represented that the MSPB had determined the Postal Service's actions were in accordance with 5 U.S.C. §8151 and applicable regulations. The Commission notes that the Board's October 26, 1981 Decision found that the agency had fulfilled its obligation to restore appellant. The Board further noted that "[a]ppellant's claims do not go to the issue of restoration, per se, but to his apparent belief that he should have been restored to a wholly different position [Letter Carrier] at a different rate of pay from the one he had held. The Board does not have jurisdiction to consider this aspect of appellant's claim." (emphasis added). Thus, it is evident that the MSPB decision did not address appellant's

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(Footnote Continued)
period of disability, they will incur no loss of benefits that they would have received were they not injured." The Senate Report does not distinguish between fully-recovered employees and partially-recovered employees.

contention as to his within-grade step level. See Robert Jorgensen v. U.S. Postal Service, MSPB No. SE03538110038, October 26, 1981.[13]

In addition, the agency directs the Commission's attention to the decision of an Arbitrator in U.S. Postal Service v. American Postal Service Union, Grievance Nos. H8C-4A-C-11834, 11772 and 11832, dated September 3, 1982. The union claimed that the two grievants should have been reinstated at the salary levels they would have occupied had they not been injured on-the-job. However, the Arbitrator's decision focused on the union agreement. The Arbitrator noted that, pursuant to a provision of the union agreement, the union had the opportunity to challenge Postal Service regulations which denied step increases to partially recovered employees. However, in the opinion of the Arbitrator the union failed to challenge the regulation at the appropriate time. Accordingly, the Arbitrator denied the grievances. Since the focus of the Arbitrator was whether the agency had violated the union contract and whether the union had timely challenged the alleged violation, the Arbitrator's decision is of limited relevance to the instant case.

Finally, the agency argues that step increases are not automatic. Rather, they are based on merit. However, the agency concedes that had appellant returned as a fully recovered employee, appellant would have been given credit for step increases to which he would have been entitled but for the injury. Thus, in some instances employees are given credit for time on workers' compensation without regard to merit.

In view of the purpose of the legislation, OPM's interpretation of 5 U.S.C. §8151(a) as applying to partially recovered employees, and the specific reference in 5 U.S.C. §8151(a) to within-grade step increases, the Commission finds that the agency erred in interpreting 5 U.S.C. §8151(a) as permitting disparate treatment between partially recovered and fully recovered injured employees. In summary, 5 U.S.C. §8151 and the Rehabilitation Act are complementary. The minimum restoration rights and benefits due former civil servants who sustain on-the-job injuries are set forth in 5 U.S.C. §8151. The Rehabilitation Act provides, in part, that "handicapped" persons (including former federal employees who have partially recovered from on-the-job injuries) are not subjected to discrimination in the form of disparate treatment because of their handicaps.

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[13] Similarly, in James Blackburn v. U.S. Postal Service, MSPB No. SF03538110476, July 30, 1982, the Board on its own motion vacated an Initial Decision in favor of the appellant therein and dismissed the appeal for lack of jurisdiction. The Initial Decision in Blackburn had held that the appellant was entitled to be rehired at the step level he would have held in the absence of the injury.

Having given within-grade step increases to fully recovered injured employees who resume employment more than one year after commencement of compensation, the agency is required by §501 of the Rehabilitation Act, as amended, to give within-grade step increases to similarly situated partially recovered injured employees. Accordingly, the Commission finds that the agency violated the Rehabilitation Act by denying appellant, a qualified handicapped person, the within-grade step increases to which he would have been entitled had he fully recovered from his on-the-job injury. Accordingly, the final agency decision is REVERSED.

CONCLUSION

Based upon a review of the record, the decision of the Equal Employment Opportunity Commission is to reverse the agency's finding of no discrimination based on handicap and to enter a finding of discrimination based on handicap. In order to remedy its past discrimination against appellant, the agency shall comply with the directions of the following Order:

ORDER

A. Since the record establishes that appellant would have been rehired at a higher step level but for the discrimination herein, the agency is directed to immediately and retroactively amend personnel records to reflect that appellant was rehired on November 24, 1980 and March 31 1981 at the appropriate within-grade step level with backpay and all other benefits which would have accrued in the absence of discrimination. Backpay shall be computed in the same manner as prescribed by 5 C.F.R. §550.805.

B. The agency is directed to ensure that appellant and similarly situated handicapped employees are not subjected to discrimination in the future.

C. The agency is directed to post at its facility in Eugene, Oregon, copies of the attached notice. Copies of the notice, after being signed by the agency's duly authorized representative, shall be posted by the agency immediately upon receipt, and be maintained by it for 60 consecutive days, in conspicuous places, including all places where notices to employees and applicants for employment are customarily posted. The agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material.

IMPLEMENTATION OF THE COMMISSION DECISION

Under EEOC regulations, compliance with the Commission's corrective action is mandatory. The agency must report to the Commission, within thirty (30) calendar days of receipt of the decision, that corrective action has been taken. The agency's report should be forwarded to the Compliance Officer, Office of Review and Appeals, Equal Employment Opportunity Commission, 5203 Leesburg Pike, Falls Church, Virginia, 22041. A copy of the report should be sent to the appellant.

ATTORNEY'S FEES

If appellant has been represented by a member of the Bar, appellant shall be awarded attorney's fees under 29 C.F.R. §1613.271(c). The attorney shall submit to the agency within twenty (20) days of receipt of this decision, the documentation required by 29 C.F.R. §1613.271(c)(2). The agency shall process the claim within the time frames set forth in §1613.271(c)(2).

A statement of appellant's rights (R-1) is attached to this decision.

FOR THE COMMISSION:

January 20, 1988
Date

Executive Officer
Executive Secretariat

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
An Agency of the United States Government

This Notice is posted pursuant to an Order dated by the United States Equal Employment Opportunity Commission which found that a violation of Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §791 had occurred at this facility.

Federal law requires that there be no discrimination against any employee or applicant for employment because of the person's RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, AGE or PHYSICAL or MENTAL HANDICAP with respect to hiring, firing, promotion, compensation, or other terms, conditions or privileges of employment.

The United States Postal Service supports and will comply with such Federal law and will not take action against individuals because they have exercised their rights under law.

The United States Postal Service has retroactively amended its personnel records to reflect that the employee was rehired at the appropriate within-grade step level. The United States Postal Service will ensure that officials responsible for personnel decisions and terms and conditions of employment will abide by the requirements of all federal equal employment opportunity laws and will not treat partially recovered injured employees who are reemployed more than one year after the commencement of compensation less favorably than similarly situated fully recovered injured employees.

The United States Postal Service will not in any manner restrain, interfere, coerce, or retaliate against any individual who exercises his or her right to oppose practices made unlawful by, or who participates in proceedings pursuant to, Federal equal employment opportunity law.

Date Posted:_____

Posting Expires:_____

29 C.F.R. Part 1613