

CCAs, continuation of pay and wage-loss compensation



**Kevin
Card**

This winter's weather has taken a toll on many letter carriers. Record cold and snow increase the potential for on-the-job injuries. While longtime letter carriers have the experience and cold-weather gear to deal with unusual cold and snow, our newest city carrier assistants (CCAs) often do not. There is concern that CCAs may be getting injured and are not reporting injuries or filing claims.

CCAs are protected by the Federal Employees Compensation Act (FECA), just like their career counterparts. FECA protection exists from the first day a CCA begins his or her employment with the Postal Service, be it a "shadow" day, orientation or classroom instruction. Newly hired CCAs

should be advised of their FECA rights and protections at orientation and during on-the-job training.

Due to the nature of their employment, CCAs in their 90/120-day probationary period may be reluctant to file claims for on-the-job injuries. Failing to file a claim in a timely manner can lead to multiple problems in getting a claim accepted, while failing to seek medical treatment for a traumatic injury can lead to lifelong disabilities. Branch officers should support CCAs injured on the job and assist in the timely submission of claims.

When filing a claim for a traumatic injury, workers can choose between continuation of pay (COP) and sick or annual leave. COP is almost always the best option. As CCAs do not have any sick leave and accrue annual leave slowly, COP sometimes is the only option. Proper computation of COP and wage-loss compensation (WLC) for CCAs has been problematic in some cases.

In some districts, the Postal Service has simply paid CCAs COP hours equal to their minimum call-in guarantee. That is inconsistent with OWCP regulations and thus constitutes a contractual violation that should be grieved. While the computation of COP and wage-loss compensation is relatively straightforward for career employees with set work schedules, it is more complex for employees like CCAs who work variable hours, with few or no guarantees.

OWCP has addressed the issue of how to calculate COP and wage-loss compensation for Postal Service CCAs, in FECA Bulletin (FB 13-03). The bulletin provides OWCP claims examiners and agency injury compensation specialists with guidance for determining CCA COP and wage-loss compensation.

It is important to understand that the Postal Service pays COP (but it is required to pay it in accordance with OWCP regu-

lations), while OWCP pays WLC (but bases it on certification by the Postal Service of employee pay rates and hours worked).

The formula that OWCP requires agencies (including the Postal Service) to use to calculate COP is different than the formula OWCP uses to calculate WLC, for employees with no set work hours such as CCAs. In addition, there are separate formulas for determining WLC for employees who have worked in the CCA position for 11 months or more, versus those CCAs who have worked in the position for less than 11 months. The three formulas are described below.

The method for calculating COP weekly pay for CCAs is found at 20 CFR 10.216(b)(2): Calculate the total pay earned by the employee during the one-year period prior to date of injury (excluding overtime), divided by the number of weeks worked by the employee during that one-year period (a partial workweek counts as an entire week). Because CCAs were first hired in February 2013, many CCAs have worked in the CCA position for less than one year. In those cases, COP will be calculated on CCA time of less than one year.

The method for calculating wage-loss compensation weekly pay for CCAs depends on how long the CCA has been employed as a CCA. There are two possible methods:

- **If the employee has not worked 11 months or more in the CCA position:** WLC is calculated in accordance with 5 USC 8114(d)(2) as follows: Total pay (excluding overtime) for the year prior to date of injury for an employee in the same (or neighboring) facility who did work 11 months or more in either TE or CCA positions. If there is more than one such employee, the one who worked the most hours in the year must be used. Divide that total by 52 weeks to calculate weekly wage-loss compensation.
- **If the employee has worked 11 months or more in the CCA position:** WLC is calculated in accordance with 5 USC 8114(d)(1) as follows: total pay earned by the employee during the one-year period prior to the date of injury (excluding overtime) divided by 52 weeks.

Branch contract enforcers should initiate grievance investigations for any CCA getting less than 40 hours of COP or WLC, including Article 17 information requests. Necessary documents will include the payroll journals for the year prior to injury, Form 50s, CA-7s, and the documentation the Postal Service used to determine their COP or provided to OWCP to determine WLC amounts.

Grievances should be filed whenever the Postal Service pays COP inconsistent with OWCP regulations detailed above, or when it provides incorrect or incomplete salary and work hour information to OWCP.

FECA BULLETIN NO. 13-03

Issue Date: June 18, 2013

Subject: New United States Postal Service Job Classifications

Background: The United States Postal Service (USPS) has created two new non-career positions:

- City Carrier Assistant (CCA), effective April 2013
- Mail Handler Assistant (MHA), effective June 2013

CCA and MHA employees will be hired for terms of 360 days and, if reappointed, will have a break in service of five days between appointments. Their service week will be a calendar week beginning on 12:01AM Saturday and ending at 12:00AM the following Friday. CCA and MHA employees are guaranteed either two hours or four hours of work or pay on each scheduled day that they report for duty, depending on the facility. CCA employees may be separated at any time during their term of appointment for lack of work.

Purpose: To inform the appropriate personnel of the procedures regarding payment of continuation of pay (COP) and payment of compensation to injured CCA and MHA employees.

References: 20 C.F.R. §10.216(b)(2); 5 U.S.C. §8114(d)

Applicability: Appropriate National Office and District Office personnel.

Action:

A. Computation of COP

As part-time workers who generally do not work the same number of hours each week, but who do work each week of the year, COP for CCA and MHA employees should be calculated in accordance with 20 C.F.R. §10.216(b)(2). The weekly pay rate for COP is therefore the average of the weekly earnings for the year prior to the date of injury, in accordance with the following formula:

Total pay earned during one-year period prior to injury (excluding overtime), divided by 52 weeks for the year prior to the injury (or prorated if employee worked less than a year).

For purposes of this computation, a partial-work week is counted as an entire week.

B. Computation of Compensation

1. Upon receipt of a properly completed CA-7, Claim for Compensation, for a CCA or MHA employee, the CE should review the case file in accordance with established procedure to determine whether the employee is entitled to compensation for the claimed period.

2. If it is determined that the employee is entitled to compensation, the CE should then compute the pay rate. The CE should first review the USPS response in Section 9(b) of the CA-7. If the USPS indicated that the employee worked in the position for 11 months prior to injury, compensation should be paid in accordance with **5 U.S.C. 8114(d)(1)**.

As work hours for CCA and MHA employees are generally variable, the CE should obtain the employee's gross earnings (excluding overtime) from the USPS for the year prior to the appropriate effective pay rate date and divide by 52 to obtain the base pay rate. If applicable, the USPS should also be asked to provide gross premium pay for the year prior to the appropriate effective pay rate date for inclusion in the pay rate.

3. If, in Section 9(b) of the CA-7, the USPS indicated that the employee did not work in the position for 11 months prior to injury, but that the position would have afforded employment for 11 months but for the injury, compensation should be paid in accordance with **5 U.S.C. 8114(d)(2)**.

As work hours for CCA and MHA employees are generally variable, the CE should request that the USPS provide the gross earnings (excluding overtime) of an employee of the same class working substantially the whole year prior in the same or similar employment in the same or neighboring place. The CE should then divide by 52 to obtain the base pay rate. If applicable, the USPS should also be asked to provide gross premium pay amounts for inclusion in the pay rate.

4. If the USPS advises that there are no employees of the same class who have worked substantially the whole preceding year in the same or similar employment, 5 U.S.C. 8114(d)(2) is not applicable and compensation should be computed in accordance with **5 U.S.C. 8114(d)(3)**.

The CA-1029 and CA-1030 forms (or equivalent) should be released to the claimant and employer as appropriate. Following development, the CE should compensate the claimant by taking the highest of:

(a) The earnings of the employee in the year prior to the appropriate effective pay rate date, including any similar non-Federal employment (if no other employment this figure should be calculated by using prorated weeks like the COP calculation);

(b) The earnings of a similarly-situated employee; or

(c) The pay rate determined by the "150 formula."

The CE may compensate the claimant using a provisional pay rate while the pay rate is being developed.

5. If the USPS indicates, in Section 9(b) of the CA-7, that the position would not have afforded employment for 11 months but for the injury, the CE should first seek clarification from the agency. CCA and MHA employees are hired for terms of 360 days, which exceeds 11 months. Should the USPS provide sufficient rationale for its notation that the position would not have afforded employment for 11 months, compensation should be computed under 5 U.S.C. 8114(d)(3). Otherwise, compensation should first be considered under 5 U.S.C. 8114(d)(2).

Note: Because the CCA and MHA positions are new to the USPS, if an employee is injured within the first 11 months after the effective date of the positions, 5 U.S.C. 8114(d)(1) will not apply initially, since the employee will not have worked in the position for 11 months.

6. MHA Position - OWCP has determined that there was not a position similar to the MHA; therefore, the CE will be unable to request the earnings of a similar employee for an MHA until someone in the particular facility (or a neighboring facility) has worked the MHA position for 11 months. This means that 5 U.S.C. 8114(d)(2) cannot initially be applied and compensation for the MHA should be computed in accordance with 5 U.S.C. 8114(d)(3).

CCA Position - However, when reviewing the duties of the CCA, OWCP has determined that a similar position did exist prior to the creation of the CCA. The Carrier Tech TE and the City Carrier (Transitional) performed similar functions to those of the CCA. Therefore the CE may apply 5 U.S.C. 8114(d)(2) by seeking the year prior earnings for the employee in that facility (or neighboring facility) who worked the most hours in the year prior in either of the Carrier Tech TE and the City Carrier (Transitional) positions.

Disposition: This bulletin is to be retained until the FECA PM has been updated.

DOUGLAS C. FITZGERALD
Director for Federal Employees' Compensation