

Article 17/31: Requests for information related to OWCP claims

The Postal Service and the Office of Workers' Compensation Programs (OWCP) have for years disputed the correct interpretation of Privacy Act restrictions on access to, and use of, copies of OWCP claim file documents that are held by the Postal Service. A recent development in that dispute is likely to have a direct impact on NALC shop stewards and other contract enforcers, whenever they make Article 17/31 information requests related to OWCP claim file information.

The USPS-OWCP dispute flows from the Privacy Act itself. That law places restrictions on federal agencies regarding the collection, use and disclosure of personal and private information regarding individuals. In general, the Privacy Act requires that each agency identify the purpose for which it collects information about an individual, and obtain permission from the employee before disclosing that information for a purpose inconsistent with the purpose for which it was collected. The Privacy Act, at 5 USC 552e, requires each federal agency to establish its own systems of records detailing what information it is allowed to collect. The Privacy Act also provides that each agency shall publish its own regulations establishing the collection, use and disclosure of private information about individuals.

The Postal Service Privacy Act regulations are found at 39 CFR 266 and 268, and its system of records covering OWCP claim file documents is identified as USPS 100.850. The OWCP Privacy Act regulations are found at 29 CFR 70 and 71, and its system of records covering OWCP claim file documents is identified as DOL/GOVT-1. In both cases, the regulations identify certain routine uses under which an agency can disclose private information about an individual without that individual's consent. However, there is a major difference between those regulations.

USPS regulations include the following routine use permitting disclosure of OWCP claim file documents:

Disclosure to Labor Organizations. As required by applicable law, records may be furnished to a labor organization when needed by that organization to perform its duties as the collective bargaining representative of Postal Service employees in an appropriate bargaining unit.

OWCP regulations, however, state a similar routine use this way:

To labor unions and other voluntary employee associations from whom the claimant has requested assistance for the purpose of providing such assistance to the claimant.

The Privacy Act dispute between the Postal Service and OWCP in large part centered on the difference between those regulations. USPS said its own regulations applied to copies of OWCP claim file documents in USPS 100.850 and that USPS could release such documents to unions in

accordance with the USPS routine use regulation quoted above. OWCP said that USPS regulations were not applicable to OWCP claim file documents held by the Postal Service, and that instead, OWCP regulations were applicable. OWCP said that its regulations prohibited the Postal Service from disclosing OWCP claim file documents (concerning an individual employee) to a union, unless the Postal Service had a signed release from the individual employee, or had OWCP's permission.

In July 2013, the dispute erupted, with OWCP suspending virtually all USPS access to OWCP claim file data. OWCP took that action after USPS refused to sign an MOU acknowledging that OWCP regulations controlled USPS disclosure of copies of OWCP claim file documents. The Department of Justice weighed in on the issue in support of OWCP's position.

In late October 2014, however, the dispute was resolved. OWCP ended the data suspension after USPS signed an MOU with OWCP, and a second MOU with OWCP and NLRB. USPS agreed that it would not provide OWCP claim file information concerning an individual in response to a union request, unless 1) the union has obtained a signed Privacy Act release from the individual authorizing the release, 2) a court orders the release, or 3) OWCP authorizes the release.

This new development will have a direct impact on contract enforcement and grievance investigations in cases where OWCP claim file information is relevant. Many grievances fit that bill, such as discipline for alleged OWCP fraud, and violations by the Postal Service of its obligations under the FECA.

As a result, shop stewards and branch officers should immediately do two things whenever discipline is issued related in any way to an individual OWCP claim, or a grievance investigation is initiated related to Postal Service violation of an OWCP related obligation:

1. **Obtain a signed release from the employee being disciplined, or the employee at issue in a Postal Service violation of FECA obligations.** Provide a copy of the release to the Postal Service along with the Article 17/31 request. If a steward is unable to obtain a signed release, he or she should contact the NBA for assistance.
2. **Advise and assist the employee at issue in making a written request directly to OWCP for a complete copy of the OWCP claim file.** Because OWCP response times for providing file copies may exceed grievance time limits, these requests should be uploaded directly to OWCP via ECOMP, which can be accessed at the NALC Compensation Department website by clicking on "Tools for Managing your OWCP Claim."

To see sample forms, go to nalc.org/workplace-issues/injured-on-the-job.