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STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 11/27/85

REQUEST

Bill Resolution No. : CSSS HB318 (L&C)
 Title : "An Act relating to ...
 injured state employees"
 Sponsor : : zymanski
 Requestor : House Finance
 Date of Request : 5/06/85

FISCAL DETAIL

Agency Affected : Labor
 BRU : Workers' Compensation
 Components : Workers' Compensation

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Ms. Jacque McClintock
 Division : Workers' Compensation

Phone : 465-2790
 Date : 11/27/85

Approved by Commissioner : Jim Robison
 Agency : Labor

Date : 11/27/85

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Business
- Impacted Agency

Offered: 5/1/85
Referred: Finance

Original sponsors: Szymanski, Collins,
and Rieger

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 318 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to rights of injured state employ-
7 ees."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 23.40 is amended by adding a new section to read:

10 Sec. 23.40.075. ITEMS NOT SUBJECT TO BARGAINING. The parties
11 may not negotiate terms contrary to the reemployment rights for
12 injured state employees under AS 39.25.158.

13 * Sec. 2. AS 39.25 is amended by adding new sections to read:

14 Sec. 39.25.157. POSITION DESCRIPTIONS. The division of person-
15 nel, in consultation with the appropriate department or agency, shall
16 require the preparation of and shall maintain a position description
17 for each position in the classified and partially exempt services.
18 The position description shall describe the essential functions of the
19 position and the actual skills and abilities required to perform the
20 tasks assigned to the position. A general requirement for physical
21 abilities may not be imposed on a job classification unless each
22 position within the class requires the use of the physical ability.

23 Sec. 39.25.158. REEMPLOYMENT RIGHTS FOR INJURED STATE EMPLOYEES.

24 (a) An injured employee is eligible for reemployment rights under
25 this section if the employee requests to return to work for the state
26 within 90 days after receipt of a release from a physician indicating
27 that the employee is able to return to full or modified work.

28 (b) After an employee requests to return to work, the rehabili-
29 tation administrator of the division of workers' compensation or the

*period of
time employed*
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*change
14 + 1 yr
13 + 6 mo*

1 director of vocational rehabilitation in the Department of Education
2 shall review the request and certify that the employee is able to
3 return to work under (c), (d), (e), or (f) of this section, or defer
4 certification until the employee completes retraining under (f) of
5 this section.

6 (c) If the rehabilitation administrator or the director of
7 vocational rehabilitation certifies that the employee is able to
8 perform the tasks assigned to the employee's former position, the
9 agency shall reemploy the employee within 30 days after receipt of the
10 certification unless the position no longer exists. If a permanent,
11 probationary or provisional employee is currently employed in the
12 position, the agency shall cause a vacancy under the layoff provisions
13 of AS 39.25.150(13).

14 (d) If the employee is not eligible for reemployment under (c)
15 of this section but is able to perform the essential functions of the
16 position, then the agency shall reemploy the employee in the position
17 after making a reasonable accommodation to the physical and mental
18 limitations of the employee unless the position no longer exists.
19 Reasonable accommodation may include imposing work restrictions on the
20 tasks performed by the employee, making job or site modifications
21 necessary to permit the employee to perform the tasks of the position,
22 removing institutional and architectural barriers, and providing
23 additional support services.

24 (e) If the employee is not eligible for reemployment under (c)
25 or (d) of this section and if the agency has a vacant position for
26 which the employee is qualified that is comparable in wage to the
27 position the employee previously held, then the agency shall offer the
28 employee the position. If the employee is unable to perform the
29 essential functions of a comparable position within the agency, then

1 the employee is entitled to reemployment in a comparable position for
2 which the employee is qualified with another agency if the position is
3 vacant and the employee is able to perform the essential functions of
4 that position.

5 (f) If the agency and other agencies in the state are unable to
6 reemploy the employee in a position at a wage comparable to the
7 employee's previous wage, the employee may request reemployment at a
8 lower wage or accept retraining under AS 23.30.041. After completing
9 the training the employee may request reemployment in a position for
10 which the employee has been retrained in the agency. If the agency
11 cannot offer reemployment, the employee may request reemployment in a
12 position for which the employee has been retrained with another
13 agency.

14 (g) An agency may refuse to reemploy or continue the employment
15 of a former employee if reasonable accommodation imposes an undue
16 hardship on the operation of the agency's program or if, after reason-
17 able efforts at accommodation, the injured employee cannot perform the
18 essential functions of the position in a manner that would not endan-
19 ger the health or safety of

20 (1) the employee because the job imposes an imminent and
21 substantial degree of risk to the employee; or

22 (2) others to a greater extent than if a nonhandicapped
23 person performed the job.

24 (h) Factors an agency may consider in determining undue hardship
25 under (g) of this section include the current number of employees in
26 the section or office, number and type of facilities, size of budget,
27 nature and cost of the accommodation needed, and the type, composi-
28 tion, and structure of the work force.

29 (i) Notwithstanding any other provision of law, if an injured

1 employee requests reemployment under (e) or (f) of this section and if
2 the employee is able to perform the essential functions of the posi-
3 tion, the state may not hire another person for that position except
4 an employee in layoff status for that job class.

5 (j) A collective bargaining agreement under AS 23.40.070 -
6 23.40.260 may not include terms contrary to this section.

7 (k) In this section

8 (1) "agency" includes a department, division, office,
9 agency, board, commission, authority, or other organizational unit of
10 the executive, legislative, and judicial branches of state government
11 including the University of Alaska;

12 (2) "injured employee" or "employee" means a permanent,
13 probationary, or provisional employee of an agency whose injury is a
14 compensable injury or condition under AS 23.30.

15 * Sec. 3. Nothing in this Act modifies or terminates the terms of a
16 collective bargaining agreement in existence on the effective date of this
17 Act.

WORK DRAFT

WORK DRAFT

WORK DRAFT

Cramer
4/9 86

Original sponsors: Szymanski, Collins,
and Rieger

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 SENATE CS FOR CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 318 (L&C)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to rights of injured state employ-
7 ees."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 23.40 is amended by adding a new section to read:

10 Sec. 23.40.075. ITEMS NOT SUBJECT TO BARGAINING. The parties
11 may not negotiate terms contrary to the reemployment rights for in-
12 jured state employees under AS 39.25.158.

13 * Sec. 2. AS 39.25 is amended by adding new sections to read:

14 Sec. 39.25.157. POSITION DESCRIPTIONS. The division of person-
15 nel, in consultation with the appropriate department or agency, shall
16 require the preparation of and shall maintain a position description
17 for each position in the classified service. The position description
18 shall describe the essential functions of the position and the actual
19 skills and abilities required to perform the tasks assigned to the
20 position. A general requirement for physical abilities may not be
21 imposed on a job classification unless each position within the class
22 requires the use of the physical ability.

23 Sec. 39.25.158. REEMPLOYMENT RIGHTS FOR INJURED STATE EMPLOYEES.

24 (a) An injured employee is eligible for reemployment rights under
25 this section if the employee requests to return to work for the state
26 within 30 days after receipt of a release from a physician indicating
27 that the employee is able to return to full or modified work.

28 (b) After an employee requests to return to work, the rehabili-
29 tation administrator of the division of workers' compensation or the

1 director of vocational rehabilitation in the Department of Education
2 shall review the request and certify that the employee is able to
3 return to work under (c), (d), (e), or (f) of this section, or defer
4 certification until the employee completes retraining under (f) of
5 this section.

6 (c) If the rehabilitation administrator or the director of
7 vocational rehabilitation certifies that the employee is able to
8 perform the tasks assigned to the employee's former position, the
9 agency shall reemploy the employee within 30 days after receipt of the
10 certification unless the position no longer exists. If a permanent,
11 probationary or provisional employee is currently employed in the
12 position, the agency shall cause a vacancy under the layoff provisions
13 of AS 39.25.150(13).

14 (d) If the employee is not eligible for reemployment under (c)
15 of this section but is able to perform the essential functions of the
16 position, then the agency shall reemploy the employee in the position
17 after making a reasonable accommodation to the physical and mental
18 limitations of the employee unless the position no longer exists.
19 Reasonable accommodation may include imposing work restrictions on the
20 tasks performed by the employee, making job or site modifications
21 necessary to permit the employee to perform the tasks of the position,
22 removing institutional and architectural barriers, and providing
23 additional support services.

24 (e) If the employee is not eligible for reemployment under (c)
25 or (d) of this section and if the agency has a vacant position for
26 which the employee is qualified that is comparable in wage to the
27 position the employee previously held, then the agency shall offer the
28 employee the position. If the employee is unable to perform the
29 essential functions of a comparable position within the agency, then

1 the employee is entitled to reemployment in a comparable position for
2 which the employee is qualified with another agency if the position is
3 vacant and the employee is able to perform the essential functions of
4 that position.

5 (f) If the agency and other agencies in the state are unable to
6 reemploy the employee in a position at a wage comparable to the em-
7 ployee's previous wage, the employee may request reemployment at a
8 lower wage or accept retraining under AS 23.30.041. After completing
9 the training the employee may request reemployment in a position for
10 which the employee has been retrained in the agency. If the agency
11 cannot offer reemployment, the employee may request reemployment in a
12 position for which the employee has been retrained with another agen-
13 cy.

14 (g) An agency may refuse to reemploy or continue the employment
15 of a former employee if reasonable accommodation imposes an undue
16 hardship on the operation of the agency's program or if, after reason-
17 able efforts at accommodation, the injured employee cannot perform the
18 essential functions of the position in a manner that would not endan-
19 ger the health or safety of

20 (1) the employee because the job imposes an imminent and
21 substantial degree of risk to the employee; or

22 (2) others to a greater extent than if a nonhandicapped
23 person performed the job.

24 (h) Factors an agency may consider in determining undue hardship
25 under (g) of this section include the current number of employees in
26 the section or office, number and type of facilities, size of budget,
27 nature and cost of the accommodation needed, and the type, composi-
28 tion, and structure of the work force.

29 (i) Notwithstanding any other provision of law, if an injured

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employee requests reemployment under (e) or (f) of this section and if the employee is able to perform the essential functions of the position, the state may not hire another person for that position except an employee in layoff status for that job class.

(j) A collective bargaining agreement under AS 23.40.011 - 23.40.260 may not include terms contrary to this section.

(k) In this section

(1) "agency" includes a department, division, office, agency, board, commission, authority, or other organizational unit of the executive branch of state government;

(2) "injured employee" or "employee" means a permanent, probationary, or provisional employee of an agency in the classified service whose injury is a compensable injury or condition under AS 23.30.

* Sec. 3. Nothing in this Act modifies or terminates the terms of a collective bargaining agreement in existence on the effective date of this Act.

Bill No. 2nd Sponsor Substitute for
House Bill No. 318
Title "An Act relating to rights of injured
State employees."

Date April 23, 1985

Contact: *J. L. McClintock*
465-2790

The Department of Labor supports passage of the 2d Sponsor Substitute for HB 318, providing rehire rights for injured state employees.

The latest sponsor substitute adds several key features which strengthen the provisions of the bill and responds to the Department's concerns over potential conflicts between the earlier provisions of the bill and the workers' compensation rehabilitation provisions of AS 23.30.041.

APPROVED:

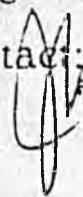
Jim Robison

Jim Robison
Commissioner

COMMITTEE SUBSTITUTE for Sponsor
Bill No. Substitute for House Bill No. 318 (L&C)

Date February 12, 1986

Title "An Act relating to rights of injured state employees."


Contact:  Jacquie L. McClintock
465-2790

The Department of Labor supports CSSSHB 318 which provides rehire rights for injured state employees.

Under the provisions of this bill, the state is required to reemploy an injured state employee in the former job position if the employee is medically able to perform the duties of the position or, if not medically able, to rehire the employee in a modified or comparable position. This bill applies to all state employees who have sustained an occupational injury or illness and who wish to return to work for the state.

This bill will afford return to work protection for injured state employees, and should, overall, reduce the state's costs of workers' compensation by returning injured and disabled employees to suitable gainful employment.

APPROVED:


Jim Robison, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

SECTIONAL ANALYSIS -- HB 318

(CS for Sponsor Substitute for HB 318, dated 5/1/86)

Section 1. Adds a new section to AS 23.40 that states that terms contrary to the provisions of this legislation may not be negotiated. Added at the request of the division of personnel.

Section 2.

Subsection 39.25.157. Requires the division of personnel, in consultation with the appropriate department or agency, to develop and maintain a detailed position description for each position within the classified and partially exempt services.

Also disallows the imposition of general physical ability requirements on a job class unless each position within the class requires the use of the physical ability.

Subsection 39.25.158.

(a) within 90 days after a physician's release to return to full or modified work, an injured employee must request to return to work for the state to be eligible for reemployment rights under this section.

(b) once an employee requests to return to work, the employee will be certified by the division of workers' compensation or the director of vocational rehabilitation. The certification will determine the employee's reemployment rights under this section. Certification may be delayed until after the employee completes retraining under (f).

(c) requires that a state agency offer an injured employee the employee's former position within 30 days, if the employee is certified able to perform the tasks assigned to the position and the position still exists. If the position is filled, the current employee shall be laid off under provisions of the personnel regulations that allow for layoffs without any reflection on an employee's work performance.

(d) requires agencies to make efforts of reasonable accommodation to the physical and mental limitations of an injured employee who is not able to perform all of the tasks assigned to the employee's former position, but who is able to perform the essential functions of the position.

Following federal language, the section defines reasonable accommodation.

(e) if, after reasonable accommodation, the employee is still unable to perform the essential functions of the employee's former position, then the agency is required to offer the employee a vacant position comparable in wage to the position the employee previously held.

If the employee is unable to perform the essential functions of a comparable position within the agency, then the employee is entitled to reemployment in a comparable position in another agency, provided that (1) the employee is qualified for the position and able to perform the essential functions of the position and (2) the position is vacant.

(f) if the employee cannot be reemployed in a comparable position by an agency of the state, then the employee may request reemployment at a lower wage or accept retraining under AS 23.30.041. After completing retraining, the employee may request reemployment in a state position for which the employee has been retrained.

(g) establishes guidelines for refusal by an agency to reemploy or continue the employment of a former employee.

(h) defines factors to be considered when determining if accommodation of an injured employee would constitute undue hardship to an agency. Factors to be considered include the number of employees in the section or office, number and type of facilities, size of budget, nature and cost of the accommodation needed, and the type, composition, and structure of the work force.

(i) requires that an injured employee requesting reemployment who is able to perform the essential functions of the position be the only person certified for that position, excepting any employees in layoff status for that job class.

(j) precludes collective bargaining agreements from including terms contrary to this section.

(k) definitions:

"agency" includes a department, division, office, agency, board, commission, authority, or other organizational unit of the executive, legislative, and judicial branches of state government including the University of Alaska.

"injured employee" or "employee" means a permanent, probationary, or provisional employee of an agency whose injury is a compensable injury or condition under AS 23.30 (Alaska Workers' Compensation Act).

Section 3. States that nothing in this act modifies or terminates the terms of a collective bargaining agreement in existence at the effective date of the act.

CHAIRMAN'S INFORMATION: SCS CSSSHB 318(L&C)

1) BILL TITLE: "An act relating to the rights of injured state employees."

a) Introduced: Szymanski, Collins, Reiger

b) Co-sponsors:

2) INTENT: This measure concerns reemployment rights of injured state employees and would require the rehire of an injured state employee if the employee was medically able to perform the duties of his former employment. If the employee is not medically able to perform the duties of his former employment, the state would have to rehire the employee in a comparable or modified position.

L&C CS requires the injured employee to request to return to work within 30 days after receipt of the physicians release, rather than the 90 day period in the House version. The SCS also limits the applicability of the bill to state employees in the classified service.

FISCAL NOTE: 0 (should reduce the state's cost of workers comp by returning an injured employee to gainful and suitable employment)

3) ADDITIONAL REFERRALS: Sen Finance and Sen Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?

b) Assign to sub committee for further review?

c) Move from committee?

d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?

b) CS adoption? Need to move for the adoption of the SCS.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY


Pouch Y. State Capitol
Juneau, Alaska 99811
(907) 465-3991

RECEIVED OCT 13 1984

October 11, 1984

MEMORANDUM

TO: Representative Mike Szymanski

FROM: Sharman Haley 
Legislative Analyst

RE: Priority Rehire For Disabled State Employees
Research Request 35-025

You have asked about instituting a policy of preferential rehire for State employees who are forced to leave their jobs due to work-related disabilities. Short summaries of rehire policies in Washington, Oregon, and Idaho as well as the U.S. Postal Service and the Municipality of Anchorage are provided below. A discussion of policy alternatives for amending Alaska law along similar lines follows.

WASHINGTON

An employee of the State of Washington who becomes disabled cannot be terminated for at least sixty days. Supervisors have broad discretion to extend leave without pay to the injured employee and fill the position temporarily until the employee is able to resume his or her duties. If the injured employee is out longer than sixty days and is terminated from his or her position, the employee is eligible to be placed on the Reduction In Force (RIF) list for that job class when he or she is ready to return to work. Persons on the RIF list have the right of first hire when vacancies in that job class appear.

If the disabled employee is not able to resume the duties of his or her former job class and seeks reemployment in an alternate job class, the employee must go through the normal application and testing procedures to be certified to the register for the alternate job class. Once certified, the disabled employee is entitled to hiring preference over applicants on the open competitive register. If the alternate job class constitutes a promotion, the disabled employee has second hire priority after those on the RIF list. If the alternate job class is a demotion or lateral transfer, reemployment preference over open competitive candidates is at the discretion of the hiring authority.

Representative Szymanski
October 12, 1984
Page Two

Under Washington law, a person whose disability keeps them out of work for more than 120 days is referred to a vocational rehabilitation counselor for evaluation and vocational rehabilitation planning. A person who is permanently disabled may qualify for the state's equal employment opportunity program for the handicapped. Washington State civil service rules allow handicapped persons to test for any job class for which they meet the minimum qualifications, whether or not that register is open for recruitment. State agencies have the option of using the list of qualified handicapped workers, in preference to the regular register when filling vacancies.

Incentive for state agencies (or any employer) to hire workers with occupational injuries is provided by the Preferred Worker Program, which excludes the worker from the computation of workers' compensation premiums for a period of three years. The benefits due the worker in the event of an injury during the three-year period are covered by the state's Second Injury Fund.

OREGON

Of the states contacted, Oregon has the strongest laws for rehiring injured employees. Oregon civil rights law provides that an injured employee has the right to reinstatement on demand in his or her former position, or in any other job, if a position is available and the worker able to perform the duties of the job. In the state system, responsibility for rehiring the injured employee falls on each agency. Oregon statutes also require "reasonable accommodation" for the special needs of handicapped workers. In the state personnel system, this may include some restructuring of the job.

IDAHO

Idaho personnel rules provide that when an employee is absent due to injury or illness, the job is held open for the employee and may not be declared vacant for at least six months. If the worker has not returned to work within six months and is terminated, for an additional 12 months the worker is eligible to be placed on the lay-off register for that agency if the doctor has cleared the employee for return to work. If the employee is not able to resume the same job duties, the agency has some discretion to modify work for the employee, but there is no program or policy to further accommodate workers who must change job classes.

Representative Szymanski
October 11, 1984
Page Three

U.S. POSTAL SERVICE

The U.S. Postal Service goes beyond the requirements of federal law to return injured employees to work. Under federal law, an injured federal employee who is able to return to work within one year has the right to return to the same or an equivalent position in the same agency. If it takes longer than a year to return to work, the employee has the right to priority placement in the same or equivalent position in that or another federal agency. The returning federal employee is credited with wage step increases and other benefits based on length of service for the entire time he or she was out on disability compensation.

A partially or temporarily disabled postal employee is on leave status until the doctor certifies that the employee is able to return to work. The worker is either returned to his or her former job, with some modification of duties if needed, or transferred to an alternate job. In planning a placement, the post office considers the risk of reinjury and the potential compensation costs as well as the skills and abilities of the worker. Only if this assessment indicates that the worker will not be returned to federal service is the employee terminated.

The responsibility for finding or creating a job falls on the local postmaster. To encourage the placement of partially disabled workers, the salary of a partially disabled employee is not paid out of the operating unit's budget, nor are the hours worked by a partially disabled worker counted in computing the operating unit's productivity rating. Thus the operating units are able to show a higher productivity, for which they are rewarded, by utilizing partially disabled workers.

ANCHORAGE

The Municipality of Anchorage has implemented a modified work program for municipal employees injured on the job. The stated purposes of the program are to minimize long-term costs to the municipality and to return the employee to good health and productive employment at the earliest opportunity.

Under the modified work program, an injured worker who is able to resume partial duties will be placed in modified work for up to three months while the worker is in transition back to full duties. If rehabilitation requires a complete change in employment, participation in the modified work program may exceed three months. The worker is paid his or her full regular salary during the period of modified work. If the worker's permanent job placement is at a lower salary than his or her old job, two-thirds of the difference is paid to the employee through the city's workers compensation account. Workers whose disability precludes them from placement in a permanent position receive a worker's compensation settlement.

Representative Szymanski
October 11, 1984
Page Four

While providing modified work is the responsibility of each municipal agency, a job placement coordinator for the municipality as a whole oversees the development of modified jobs and placements. According to Harry Sjoberg, Risk Manager for the municipality, the city's experience with the program has shown significant reductions in compensation claims and changes in the attitudes of supervisors and injured employees alike. Prior to institution of the modified work program, the prevailing pattern was that supervisors were not inclined to rehire an employee at anything less than 100 percent productivity. Employee morale suffered from prolonged periods off work. Mr. Sjoberg said that now less work time is lost, supervisors show more concern for the circumstances of their injured employees, and rehabilitation is quicker.

ALASKA

Under the Alaska personnel rules, leave without pay due to a disability is at the discretion of the supervisor, but in any case may not exceed the employee's length of service or 24 months, whichever is shorter. The supervisor may cancel leave without pay upon notice to the absent employee. If the employee does not report for duty on the specified date, he or she may be terminated immediately.

A disabled classified employee terminated "in good standing" has rehire rights for two years from the date of termination. This means that they will be placed on the transfers and rehires list for that job class, which agencies may use in preference to the regular register when seeking applicants to fill vacancies. A few departments such as Health and Social Services have internal policies requiring agency heads to use the transfer and rehire list first, but most departments leave this to the discretion of the supervisor.

Injured State workers who are unable to resume the duties of their former job have few advantages in seeking other State jobs. They must go through the same process as anyone else of finding job classes for which they qualify, waiting for an open recruitment period for that class, taking applicable tests, getting on the job register, and successfully competing with other applicants. If the worker is fortunate enough to still be on leave and thus retain permanent employee status, he or she may be eligible for noncompetitive appointment at the discretion of the hiring authority.

State law provides that workers absent from work more than 90 days due to an on-the-job injury have a right to vocational rehabilitation evaluation. This includes an assessment of skills and abilities, aid in planning for training and rehabilitation, and job placement assistance.

Representative Szymanski
October 11, 1984
Page Five

If the worker qualifies as severely handicapped and is a client of the Division of Vocational Rehabilitation, the worker may be referred to a State job and hired noncompetitively if the hiring authority chooses.

State workers whose occupational injuries disable them from resuming their former job duties qualify for a disability pension under the Public Employees Retirement System. The pension is terminated in one year, however, unless the recipient submits evidence that he or she meets the qualifications for federal Social Security disability income (SSI). Federal standards for SSI are stringent; the worker must be unable to hold any gainful employment, not merely his or her former job.

Policy alternatives to facilitate reemployment of injured State workers in Alaska, patterned after some of the preferential rehire programs in other jurisdictions, are listed below:

POLICY OPTIONS

1. Employees could be guaranteed the right to disability leave.
2. Injured workers returning to work could be placed on the lay-off list, which assures them priority placement within their former job class.
3. Injured workers unable to resume the duties of their former job class could be allowed to test for any other job class for which they meet the minimum qualifications, whether or not recruitment is open.
4. Hiring preference in alternate job classes for which the worker qualifies could be granted by making the worker eligible for the lay-off, promotion, or transfer and rehire lists. Eligibility for the lay-off list would guarantee the worker first priority placement, while the promotion and the transfer and rehire lists would give the worker preference only at the option of the hiring authority.
5. A modified work program could provide injured workers job duties tailored to their capabilities during a period of transition back to full duties or to a new job.
6. State agencies could be given incentives to rehire disabled State workers, such as omitting the disabled worker from the calculation of their worker's compensation assessment.
7. State employees injured in the course of their employment could be guaranteed State jobs when doctors certify that the employees

Representative Szymanski
October 11, 1984
Page Six

are able to return to work. The employee would be reemployed in their original job class if they were able to perform the duties, in an alternate job class for which they qualify, in an alternate job class for which they may be retrained, or in a modified job tailored to their individual capabilities.

8. The injured worker could also be extended the right to receive pay no less than the pay he or she received prior to injury, regardless of the final job placement.

These policy changes could be effected by amending AS 39.25.150 to direct the Department of Administration to provide for these policies in the personnel rules. Alternatively, reemployment could be mandated for all employers in the state under the workers' compensation or civil rights laws. Copies of the Oregon law and the Postal Service policy manual, both of which are regarded by vocational rehabilitation professionals as model policies, are attached.

Because the State is a self-insurer and is liable for workers' compensation benefits as well as for the disability pension payments, it may be in the State's financial interests as well as the interests of the injured worker to implement a preferential rehire policy and return the worker to a job as quickly as possible. Approximately 1,200 injured State employees file worker's compensation claims per year, of which about 200 to 250 include a claim for wage loss due to being out of work more than three days. Compensation is also paid for loss of earning capacity if the injured worker's prospective employment pays less than his or her former job. Compensation for wage loss is generally calculated at two-thirds of the lost wages, but because workers' compensation is tax exempt, the take home compensation is worth more than two-thirds of net wages lost.

* * * * *

I am still expecting some additional information from other states to come in the mail. If upon reviewing the material I find that it provides any significant information on this issue that I have not adequately covered here, I will forward it on to you with a supplemental memo. Meanwhile, I hope that this memorandum provides you with the information that you need.

If you have any further questions please call me.

SH

659.410 Discrimination against workers applying for workers' compensation benefits prohibited. It is an unlawful employment practice for an employer to discriminate against a workman with respect to hire or tenure or any term or condition of employment because the workman has applied for benefits or invoked or utilized the procedures provided for in ORS 656.001 to 656.794 and 656.802 to 656.824, or of 659.400 to 659.435 or has given testimony under the provisions of such sections. [1973 c.660 §4]

659.415 Reinstatement of worker receiving compensable injuries; certificate of physician evidencing ability to work; effect of collective bargaining agreement. (1) A worker who has sustained a compensable injury shall be reinstated by the worker's employer to the worker's former position of employment upon demand for such reinstatement, provided that the position is available and the worker is not disabled from performing the duties of such position. If the former position is not available, the worker shall be reinstated in any other position which is available and suitable. A certificate by a duly licensed physician that the physician approves the worker's return to the worker's regular employment shall be prima facie evidence that the worker is able to perform such duties.

(2) Such right of reemployment shall be subject to the provisions for seniority rights and other employment restrictions contained in a valid collective bargaining agreement between the employer and a representative of the employer's employees.

(3) Any violation of this section is an unlawful employment practice. [1973 c.660 §5; 1979 c.813 §3; 1981 c.874 §14]

659.420 Employment of injured worker in other available and suitable work; certificate of physician; effect of collective bargaining agreement. (1) A worker who has sustained a compensable injury and is disabled from performing the duties of the worker's former regular employment shall, upon demand, be reemployed by the worker's employer at employment which is available and suitable.

(2) A certificate of the worker's attending physician that the worker is able to perform described types of work shall be prima facie evidence of such ability.

(3) Such right of reemployment shall be subject to the provisions for seniority rights and other employment restrictions contained in a valid collective bargaining agreement between

the employer and a representative of the employer's employees.

(4) Any violation of this section is an unlawful employment practice. [1973 c.660 §6; 1979 c.813 §4]

659.425 Discrimination against mentally or physically impaired persons in employment or public accommodation prohibited; mental disorder treatment not evidence of inability to work or manage property. (1) For the purpose of ORS 659.400 to 659.435, it is an unlawful employment practice for any employer to refuse to hire, employ or promote, to bar or discharge from employment or to discriminate in compensation or in terms, conditions or privileges of employment because:

(a) An individual has a physical or mental impairment which, with reasonable accommodation by the employer, does not prevent the performance of the work involved;

(b) An individual has a record of a physical or mental impairment; or

(c) An individual is regarded as having a physical or mental impairment.

(2) It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise discriminate against, any individual because that individual is a handicapped person, or to classify or refer for employment any individual because that individual is a handicapped person.

(3) It is an unlawful employment practice for a labor organization, because an individual is a handicapped person, to exclude or to expel from its membership such individual or to discriminate in any way against such individual.

(4) It is an unlawful practice for any place of public accommodation, resort or amusement as defined in ORS 30.675, or any person acting on behalf of such place, to make any distinction, discrimination or restriction because a customer or patron is a handicapped person.

(5) Receipt or alleged receipt of treatment for a mental disorder shall not constitute evidence of a person's inability to perform the duties of a particular job or position, or of a person's inability to acquire, rent or maintain property. [1973 c.660 §7; 1979 c.640 §3]

659.430 Discrimination against handicapped persons in real property transactions prohibited; advertising discriminatory preference prohibited; assisting discriminatory practices prohibited. (1) No person because the purchaser, lessee or renter is a handicapped person shall:

LWOP for an initial period of up to 1 year from the date OWCP compensation began.

.92 Extensions. If the employee is unable to return to work at the end of the 1 year period on LWOP, the LWOP may be extended for successive additional periods of up to 6 months. Extensions are granted only if it appears that the employee is likely to return to work within the period of the extension.

.93 Separations. If it is not likely that the employee will be able to return to work at the end of one year of LWOP or during the authorized extended period, the employee may be separated. Before any employee who is on the rolls of the OWCP can be separated, the postal official must submit a comprehensive report to the General Manager, Employee Relations (Region), with appropriate recommendations and retain the employee on the rolls of the Postal Service pending a decision.

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

- a. Extends LWOP for an additional period, at the end of which an additional determination must be made;
- b. Authorizes a fitness-for-duty examination by a medical officer as provided in 547.31, .32, and .33 if OWCP does not respond within a maximum of 60 days or if OWCP's response does not explain the situation; or
- c. Request permission to terminate LWOP as required in .93; and
- d. Terminates LWOP after receiving permission from the General Manager, Employee Relations (Region) as follows:

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

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

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

546 Reemployment of Employees Injured On Duty

546.1 Law

.11 General. The USPS has legal responsibility to employees with job-related disabilities under 5 U.S.C. 8151 and the Office of Personnel Management's (OPM) regulations, as outlined below

.12 Disability Fully Overcome Within 1 Year

.121 Obligation. When the injury or disability is fully overcome within one year after the commencement of compensation payments from OWCP, or after compensable disability recurs, the USPS must give an

employee the right to resume employment in the former or equivalent position.

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

.13 Disability Fully Overcome More Than 1 Year

.131 Obligation. When the injury or disability is fully overcome more than one year after compensation began, the USPS must give an employee priority consideration for reemployment into the former position or an equivalent one.

.132 Reemployment List. The names of all former employees who fully recover from their compensable disabilities more than one year after compensation begins must be entered on a reemployment list in two groups. *Group one* will include all such former employees who are entitled to 10 point veteran preference. *Group two* will include all other such former employees. Persons in *group one* will be considered for employment before persons in *group two*, and persons in *group two* will be considered before other sources of recruitment, such as transfers from other agencies, reinstatements, or appointments from hiring registers.

.133 Rights and Benefits. The same as 546.122.

.14 Disability Partially Overcome

.141 Current Employees. When an employee has partially overcome a compensable disability, the USPS must make every effort toward assigning the employee to limited duty consistent with the employee's medically defined work limitation tolerances (see 546.32). In assigning such limited duty, the USPS should minimize any adverse or disruptive impact on the employee. The following considerations must be made in effecting such limited duty assignments:

a. To the extent that there is adequate work available within the employee's work limitation tolerances; within the employee's craft; in the work facility to which the employee is regularly assigned; and during the hours when the employee regularly works; that work shall constitute the limited duty to which the employee is assigned.

b. If adequate duties are not available within the employee's work limitation tolerances in the craft and work facility to which the employee is regularly assigned, within the employee's regular hours of duty, other work may be assigned within that facility.

c. If adequate work is not available at the facility within the employee's regular hours of duty, work outside the employee's regular schedule may be assigned as limited duty. However, all reasonable efforts shall be made to assign the employee to limited duty within the employee's craft and to keep the hours of limited duty as close as possible to the employee's regular schedule.

d. An employee may be assigned limited duty outside of the work facility to which the employee is normally assigned only if there is not adequate work available within the employee's work limitation tolerances at the employee's facility. In such instances, every effort will

be made to assign the employee to work within the employee's craft, within the employee's regular schedule, and as near as possible to the regular work facility to which normally assigned.

.142 Former Employees. When a former employee has partially recovered from a compensable injury or disability, the USPS must make every effort toward reemployment consistent with medically defined work limitation tolerances. Such an employee may be returned to any position for which qualified, including a lower grade position than that held when compensation began.

.15 Employee Appeal Rights. An employee who believes the proper consideration for reemployment was not received may appeal to the Merit Systems Protection Board, under 5 CFR, 353.

546.2 Collective Bargaining Agreements

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.

.21 Contractual Considerations

.211 Scope. Collective bargaining agreement provisions for filling job vacancies and promotions, and procedures relating to retreat rights due to reassignment, will be complied with before an offer of employment is made to a former postal employee on the OWCP rolls for more than 1 year.

.212 Reemployment. A former employee will be offered reemployment in a residual vacancy (a vacancy which has been posted for bid or application and for which there are no successful bidders or applicants), or may work as an unassigned regular or as a part-time flexible. Regional Directors, Employee and Labor Relations (APMG, Employee Relations, for Headquarters and Administrative Support Facilities (ASFs) may waive minimum qualification requirements (including written examinations) in individual cases for former employees injured on duty who are being considered for reemployment when there is evidence (including that submitted by the medical officer) that the employee can be expected to perform satisfactorily in the position within ninety days after assignment.

.22 Types of Appointments

.221 Former career employees will be reemployed as career full-time or part-time employees.

.222 Former substitute rural carriers will be reemployed as substitute rural carriers or in any other position for which they qualify.

.223 Former casual and temporary employees will be reemployed as casual or temporary employees. Upon satisfactory demonstration of ability to meet job requirements during two 90-day casual appointments or one 180-day temporary appointment, the employee's

status may be noncompetitively converted to a career appointment (NOA 501).

546.3 OWCP Referrals

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

.32 Work Limitation Tolerances. The individual's physician of record, or other physician selected by the individual or OWCP, will furnish OWCP with a definitive medical summary, clearly documenting the medical limitations that will have to be accommodated. The OWCP District Medical Director evaluates the work limitation tolerances, submitted by the physician of record, and upon concurrence, refers them to the USPS for consideration.

.33 USPS Medical Review

.321 Reemployment Physical Examination

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

b. A complete physical examination, paid for by the USPS, will be required by the appointing officer. The result of the physical examination will be documented on Form 2485, *Certificate of Medical Examination*.

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

.322 Special Considerations

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

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

c. All former employees, now permanently, partially disabled, have some type of residual handicap. The medical officer, conducting the physical examination, will be responsible for assigning the correct handicap code as defined in Handbook P-11, *Personnel Operations*, Chapter 6.

546.4 Restoration Rights

.41 OPM Regulations. OPM has responsibility for the implementing regulations of 5 USC 3151. These regulations are codified in 5 CFR Part 353. 5 USC 8151(a) provides that an individual, injured or disabled on duty, who resumes employment with the USPS is to be credited with the time during which compensation

was received for purposes of certain rights and benefits based upon length of service.

.42 Rights and Benefits upon Partial Recovery

.421 Seniority. Individuals, reemployed into bargaining unit positions will be credited with seniority in accordance with the collective bargaining agreement covering the position to which reemployed.

.422 Probationary Period. Reemployed individuals who have completed their probationary periods, or would have completed their probationary periods but for their compensable injuries, will not be required to serve a new probationary period.

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

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

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

a. Reemployment to the Former Grade/Step. These individuals reemployed into a position with the same grade/step as held at the time of injury or disability will receive the current salary for that grade/step from the appropriate salary schedule.

b. Reemployment to a Higher Grade. Those individuals reemployed to a position with a grade higher than that of the position held at the time of injury or disability will be placed in the higher grade at the current salary for the grade/step held at the time of injury or disability. If that salary is between steps in the higher grade, the individual's salary will be increased to the next higher step.

c. Reemployment to a Lower Grade/Step.

(1) *Salary Below Maximum of Lower Grade.* The individual will be placed in any higher step in the lower grade which is less than one full step above the current salary for the grade/step of the position held at the time of injury or disability.

(2) *Salary Above Maximum of Lower Grade.* In those cases where the current salary for the grade/step held at the time of injury or disability exceeds the maximum salary of the lower grade position, the employee will be afforded a saved rate at the higher grade/step salary. These saved rate provisions apply for an indefinite period and are subject to the rules of the salary schedule to which assigned.

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

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

(2) The individual will be placed in any higher step in the new grade which is less than one full step above the current salary for the grade/step of the position held at the time of injury or disability.

(3) If reemployment is to a nonstep schedule, the individual will be placed at a salary equal to the current salary for the grade/step of the position held at the time of injury or disability.

(4) If the current salary for the grade/step held at the time of injury or disability exceeds the maximum salary of the new grade, the individual will be given a saved rate. These saved rate provisions apply for an indefinite period and are subject to the rules of the salary schedule to which assigned.

e. Former Position Under Different Salary Schedule. Where the position held at the time of injury or disability is no longer under the same salary schedule, the current salary for the former grade/step will be determined by:

(1) Regional Compensation Division, for field, district, and regional positions.

(2) Office of Compensation, Headquarters, for Headquarters and Headquarters-related positions.

f. Step Increases. Upon reemployment, permanently, partially disabled individuals begin a new waiting period for step increases.

.43 Rights and Benefits Upon Full Recovery. See 546.122.

546.5 Retirement Considerations

.51 Status. Pursuant to the Civil Service Retirement Act, a former employee who applied for and received Civil Service disability retirement status will cease to be an annuitant upon reemployment and restoration of that individual's wage earning capacity.

.52 Reinstatement of Eligibility

.521 If an annuitant, reemployed under the procedures in this section, is later found unable to successfully perform in the new position due to the original compensable injury or disability, and is again separated, the employee will be entitled to the restoration of disability retirement status under the Civil Service Retirement Act.

.522 If an employee becomes disabled for the position due to a new injury or disability after entry into that position, the employee would have a right to apply for a new Civil Service disability retirement status.

.53 Refunded Retirement Deductions. A former employee who withdrew retirement deductions based on previous employment, may redeposit the amount refunded, plus interest, after reemployment to a position from which retirement deductions are withheld.

.54 Notification. Upon reemployment of a disability annuitant (or in advance, if possible), the appointing official must notify the Office of Personnel Management, Compensation Group, Room 3305, Attention: Annuitant

Services Division, Washington, DC 20415. The notification must include the individual's name, social security number, date of birth, Civil Service Annuity claim number (CSA-Civil Service Account), date of reemployment, Form 2485, Certificate of Medical Examination and whether retirement deductions will be made from the salary for the position to which reemployed.

546.6 Relocation Considerations

.61 Scope. In some cases, former employees receiving OWCP compensation may have relocated to other geographic areas. Every effort must be made to reemploy these individuals within their current area of residence by treating them as if they had been employed at that office at the time of injury. Any offer to reemploy in a different location will be considered only after all reasonable attempts have been made to rehire within the area of the former employee's present domicile.

.62 Expense. Any relocation and travel expenses will be the responsibility of the former employee. However, under certain mitigating circumstances the SAPMG for E&LR, or the SAPMG's designee, may authorize relocation and travel expenses consistent with the provisions of Handbook M-9, *Travel*.

546.7 Reemployment Procedures

.71 Offer of Appointment

.711 Evaluation. Upon receipt and evaluation of the OWCP referral containing documented medical limitations, and evaluation of the medical officer's recommendations, the appointing official will determine if a reemployment offer can be made.

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

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

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

c. A full explanation of all restoration rights and benefits (see 546.4).

d. Full particulars regarding the position, including title, duties, grade, salary, location of work assignment, and all other information required in a preemployment interview. (See Handbook P-11, 264.8 and 265.)

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

.713 Appeal

a. Those employees who fully recover in less than one year from the date on which OWCP compensation began, may appeal to the Merit Systems Protection Board (MSPB) if they believe a proposed offer of reemployment does not meet the requirements of Office of

Personnel Management regulations 5 CFR Part 353. The letter of appeal must be submitted within 20 days after the date of the offer or 20 days after the date of reemployment, whichever is later.

b. Those employees or former employees whose full recovery extends beyond one year, or whose partial recovery falls either within or beyond one year of compensation, may appeal to the Merit Systems Protection Board only when they have requested restoration through formal application to the installation head and restoration has been refused them. An appeal to the denial of restoration must be filed with MSPB within 20 days from the day the denial letter is received. Upon restoration, however, the employees are not given the right to appeal the nature of the restoration.

.72 Refusal of Reemployment Offer. When a former employee refuses an offer of suitable employment within the OWCP defined medical limitations, the appointing officer must do the following:

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

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

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

d. Within 2 working days, forward a full written summary of the former employee's interview, including the signed declination, and medical evaluations or other pertinent information to the OWCP district office. OWCP has the responsibility to notify the Retirement and Insurance Division, Office of Personnel Management, when disability retirement status is to be evaluated.

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

a. Notify the employee in writing of that fact, with a copy to the OWCP; and

b. Include a paragraph informing the individual of the right to appeal to the Merit Systems Protection Board.

.74 Processing Personnel Actions. The reemployment of former employees injured or disabled on duty requires uniform information on Form 50-B, *Request for Personnel Action (Processing Copy for New Hires Only)*, before forwarding to the Employee and Labor Relations Information Center. (See 612.5 of Handbook P-11.)

547 Return to Duty

547.1 Therapy Obligations

The installation head must ensure that an employee reports for scheduled therapy treatment. The employee

must be advised that failure to keep appointments with a physician or hospital is a form of absenteeism. Control office/control point personnel will report failures to keep appointments to the OWCP district office.

547.2 Medical Reports

.21 Progress reports received from the attending physician may show the employee is capable of some work during convalescence or after medical treatment has been completed.

.22 If not, this information is requested by the control office/control point from the attending physician or the OWCP district office by use of Form CA-17.

.23 If the attending physician submits a medical report, Form CA-17, indicating that the employee is medically capable of performing some of the normal duties for a limited number of hours, or other work of a different nature than the employee's former assignment, the installation head must make every reasonable effort to place the employee in an appropriate assignment.

547.3 Fitness-For-Duty Determination

.31 **Determining Fitness.** The fact that an injured or ill employee is scheduled for a series of treatments or appointments with a physician or hospital does not, by itself, establish that the employee is not fit-for-duty in the interim. Control personnel will recommend, upon medical justification, to the installation head that any employee being treated by a physician or hospital be required to report to a USPS medical unit (or contract equivalent) for a fitness-for-duty examination. Only an installation head is authorized to approve a fitness-for-duty examination.

.32 **Examination Report.** This physical examination may include the parts of the anatomy being treated, provided the examination in no way disturbs or interferes with the treatment regimen. The results of this examination will be brought to the attention of the OWCP district office for consideration.

.33 **Physician Report Questioned.** If the medical officer questions the medical procedures and/or determination of the employee's attending physician, no administrative action may be taken to change the employee's compensation or employment status until the medical issue is settled.

.34 **Resolving Determination.** The following procedures apply only to fitness-for-duty determinations incident to an on-the-job injury or illness. Fitness-for-duty determinations for other purposes are not covered by this instruction.

a. The physician or hospital must, for each visit of the employee, make a professional statement, using Form CA-17, showing the employee either:

- (1) Fit-for-duty; or
- (2) Fit for limited duty, and the work tolerance limitations due to the injury; or
- (3) Not fit for duty with an expected return-to-duty date.

b. If the physician or hospital is unable to predict an employee's fitness for duty on either a short-term or long-term basis, the control office/control point supervisor may request information from the OWCP by sending Form 2573, Request—OWCP Claim Status, in duplicate, to the OWCP district office. If OWCP does not respond within a maximum of 60 days, or if the OWCP response does not explain the situation, a fitness-for-duty examination may be recommended to the installation head as provided in 547.31, .32, and .33. However, a fitness-for-duty examination can be initiated at any time to determine the duty status of the injured employee.

c. If the results of the fitness-for-duty examination disagree with the findings of the attending physician, the matter, along with justification for the USPS position, is referred by the control office/control point supervisor to the OWCP Deputy Commissioner for resolution.

d. A fitness-for-duty determination is not limited to the employee's regular duties, but should be based on whether the employing installation has any temporary alternative duties available which the employee may safely perform.