

## American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

### Appeal to Arbitration, National Dispute

Greg Bell, Director  
Industrial Relations  
1300 L Street, NW  
Washington, DC 20005  
202-842-4273 (Office)  
202-331-0992 (Fax)

August 8, 2008

#### VIA FACSIMILE AND FIRST CLASS MAIL

#### National Executive Board

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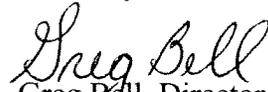
Mr. Doug Tulino  
Vice President, Labor Relations  
U.S. Postal Service, Room 9014  
475 L'Enfant Plaza  
Washington, D.C. 20260

Re: USPS Dispute No. Q06C4QC08115123, APWU No. HQTG20086,  
Medical Certification (Recertification) for a Serious Health Condition

Dear Mr. Tulino:

Please be advised that pursuant to Article 15, Sections 2 and 4, of the Collective Bargaining Agreement, the APWU is appealing the above referenced dispute to arbitration.

Sincerely,

  
Greg Bell, Director  
Industrial Relations

USPS #: Q06C4QC08115123  
APWU #: HQTG20086

Case Officer: Greg Bell  
Step 4 Appeal Date: 2/25/2008  
Contract Article(s): 10, FMLA;

cc: Resident Officers  
Industrial Relations

File

GB/LB



## American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

### Article 15 -15 Day Statement of Issues and Facts

August 8, 2008

Greg Bell, Director  
Industrial Relations  
1300 L Street, NW  
Washington, DC 20005  
(202) 842-4273 (Office)  
(202) 371-0992 (Fax)

#### Via Facsimile and First Class Mail

Ms. Mary Hercules  
Labor Relations Specialist  
U.S. Postal Service  
475 L'Enfant Plaza, SW  
Washington, D.C. 20260

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Western Region Coordinator

Re: APWU No. HQTG20086, USPS No. Q06C4QC08115123,  
Medical Certification (Recertification) for a Serious Health  
Condition, FMLA

Dear Ms. Hercules:

On June 26, 2008, we met to discuss the above-referenced dispute at Step 4 of the grievance procedure. The parties mutually agreed to submit their written statements no later than August 8, 2008. The following represents the APWU's understanding of the issues to be decided, and the facts giving rise to the interpretive dispute.

This dispute concerns the Postal Service's decision to begin requiring employees to automatically provide "new" medical certification for a serious health condition simply because the leave year has ended and a new year has begun.

Historically, and consistent with the mutually accepted past practice followed by the Postal Service since the implementation of the Family and Medical Leave Act of 1993 (FMLA), the Postal Service has not previously required employees to automatically provide any type of medical certification for a serious health condition simply because the leave year has ended and a new year has begun. In 2000, when it was called to the APWU's attention that some local managers were automatically requiring employees to submit recertification of their conditions because of the new leave year, the Postal Service Headquarters agreed with the APWU that that "employees should not be required to automatically provide recertification for a serious health condition simply because the leave year has ended and a new leave year has begun." In addition, the Postal Service instructed its managers to "refer to 29 C.F.R. §825.308 for the circumstances and the timeframe under which recertifications may be required."

Ms. Mary Hercules  
Re: USPS No.: Q06C4QC08115123,  
August 1, 2008  
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Pursuant to Section 825.308(a) of the Department of Labor's FMLA regulations, for pregnancy, chronic, or permanent/long-term conditions, "an employer may request recertification no more often than every 30 days and only in connection with an absence by the employee," unless the circumstances described in the previous certification have changed significantly or the employer receives information that casts doubt upon the employee's stated reason for the absence. Notwithstanding the historically and mutually accepted past practice, it is the APWU's position that the "new" medical certification referred to in the Postal Service's new policy in actuality constitutes a recertification of the same serious health condition. Although the medical certification in this new policy is labeled as a "new certification," it is in actuality the same as a "recertification." Moreover, by characterizing it as a "new" certification, the Postal Service can require employees to undergo the second and third opinion process if it has reason to doubt the validity of a certification. This in turn allows the Postal Service to send the employee to a doctor of its choosing for the second opinion and to a doctor mutually agreed to by the Postal Service and employee for the third opinion.

Contrary to 29 C.F.R. §825.308(a), the new policy allows the Postal Service to require employees to submit a "new" certification less than 30 days after the employee last recertified that same condition. This would occur even if circumstances have not changed and the employer has no information casting doubt on the employee's stated reason for the absence. For example, if the employee last recertified their condition in late-December, and that same condition requires them to be absent again in mid-January the Postal Service can require that employee to recertify again in January simply because the new leave year has begun. It is the APWU's position that the Postal Service's new policy, would therefore, violate 29 C.F.R. §825.308(a).

Furthermore, following that same example, that same employee could then be required to submit to a second and third opinion if the Postal Service has reason to doubt the validity of their "new" certification. Section 825.308(e) expressly prohibits employers from requiring second and third opinions on recertification. This is equivalent to harassment, particularly when the employee had just certified and recertified their condition in the previous 12-month leave year. It is the APWU's position that the Postal Service's new policy, would therefore, also violate 29 C.F.R. §825.308(e).

It is, therefore, the APWU's position that the practice of automatically requiring employees to provide new medical certification for a serious health condition simply because the leave year has ended and a new leave year has begun is improper and inconsistent with established past practice, the FMLA, agreements between the parties, and the collective bargaining agreement.

As a basis for this new practice, it appears that the Postal Service is now relying on a Department of Labor (DOL) opinion letter that it deliberately sought in order to unilaterally discontinue the mutually accepted and agreed to practice followed by the Postal Service since 1993. In response to the Postal Service's request, the DOL stated that it is their opinion that an employer may reinitiate the medical certification process with the first absence in a new 12-month leave year.

Ms. Mary Hercules  
Re: USPS No.: Q06C4QC08115123,  
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Without prejudice to the APWU's position regarding this dispute, or DOL's opinion letter, although the DOL stated that the employer may do so, the DOL has never required the Postal Service to reinitiate the medical certification process each new leave year. Therefore, the Postal Service is not obligated under the Act to require employees to automatically provide new medical certification for a serious health condition because the leave year has ended and a new year has begun. Such action would unilaterally discontinue the mutually accepted past practice followed by the Postal Service since 1993. Furthermore, nothing in the Act is intended to discourage employers from adopting or retaining more generous benefits or leave policies.

It is the APWU's position that once an employee provides the Postal Service a completed medical certification pursuant to 29 C.F.R. §825.306, it is improper and inconsistent with established past practice, the FMLA, agreements between the parties, and the collective beginning agreement, for the Postal Service to automatically require the employee to submit "new" medical certification or recertification simply because the leave year has ended and a new leave year has begun.

It is requested that the parties expedite this dispute to be heard in arbitration.

Sincerely,

  
Greg Bell, Director  
Industrial Relations

USPS #: Q06C4QC08115123  
APWU #: HQTG20086

Case Officer: Greg Bell  
Step 4 Appeal Date: 2/25/2008  
Contract Article(s): 10, FMLA;

cc Resident Officers  
Industrial Relations

GB/bw

GB:bw  
OPEIU #2  
AFL-CIO



August 8, 2008

Mr. Greg Bell  
Director, Industrial Relations  
American Postal Workers  
Union, AFL-CIO  
1300 L Street, NW  
Washington, DC 20005-4128

**HAND DELIVERED**

**RE: Q00C-4Q-C 08115123 / HQTG20086  
Washington, DC 20260-4100**

On June 26, 2008, we met to discuss the above-captioned grievance at the fourth step of our grievance/arbitration procedures. In accordance with Article 15.2.Step4.a, this letter sets forth the Postal Service's understanding of the issues involved and the facts giving rise to these issues.

**Issue Presented:**

Is it a violation of the Collective Bargaining Agreement for the Postal Service to request new medical certification for a serious health condition with the first FMLA-absence in a new leave year?

**Position of the Parties:**

By letter dated February 25, the APWU initiated the instant dispute. The APWU believes that it is improper for the Postal Service to "automatically require the employee to submit new medical certification (recertification) with the first absence in a new leave year simply because the leave year has ended and a new leave year has begun." The APWU asserts that this requirement is tantamount to a request for recertification. Although without specificity, the APWU insists that this practice is inconsistent with established past practice, various agreements between the parties, and the Collective Bargaining Agreement.

The Postal Service disagrees. It is the Postal Service's position that the request for new medical certification in a new leave year for a previously certified serious health condition in a prior leave year does not violate the Collective Bargaining Agreement or the FMLA. Rather, it is wholly in compliance with Department of Labor policy implementing the FMLA. Moreover, this requirement is not a request for recertification as defined in 29 C.F.R. 825.308(a).

In its opinion letter FMLA2005-2-A dated September 14 2005, the Department of Labor (DOL) stated that employers had the right to request a new certification, not just a recertification, upon the employee's first absence in a new leave year. Specifically, following its rationale in its FMLA - 112 opinion letter, DOL opined, in part:

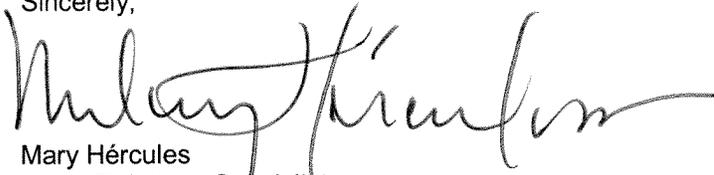
"It is our opinion that an employer may reinitiate the medical certification process with the first absence in a new 12-month leave year. A second and third medical opinion, as appropriate, could then be requested in any case in which the employer has reason to doubt the validity of the new medical certification. This is the case despite the fact that the employer had requested

recertification in the previous 12-month leave year. Such a conclusion is also consistent with FMLA's purpose of balancing the interests of employees who need leave with the interests of employers in the operation of their businesses. See 29 U.S.C. § 2601(b)."

Therefore, for the foregoing reasons, there is no violation of the FMLA or the Collective Bargaining Agreement for the Postal Service to require new medical certification with the first FMLA-absence in a new leave year.

Step 4 time limits were waived by mutual agreement with the understanding that the 15-day position statements would be submitted no later than August 8, 2008.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Hércules". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mary Hércules  
Labor Relations Specialist  
Contract Administration (APWU)