

American Postal Workers Union, AFL-CIO

Susan M. Carney, Human Relations Director
1300 L Street, N.W.
Washington, DC 20005
(202) 842-4270
FAX (202) 216-2634

DATE: June 14, 2014

To: **APWU National Officers**

RE: ***How to distinguish between Pittman and McConnell***

As I stated in my previous communication there are distinctions between the McConnell and Pittman EEOC discrimination cases. It is possible for an APWU member to be a member of both of these class action cases. However an individual's decision to participate in one (Pittman) will not impact their ability to participate in, or the grievances or other complaints connected to the other (McConnell). To keep it simple this is how to distinguish between the two, and how best to determine which grievance files are attached to which EEOC discrimination case:

Regardless of the alleged discriminatory acts or contractual violations committed by the USPS, or when; anything that occurred as a result of the National Reassessment Process falls under the McConnell case. Acts that were committed independent of the National Reassessment Process, even if they occurred when the NRP was ongoing fall to Pittman.

Note: McConnell includes both limited duty employees (temporary medical restrictions) and permanent rehab employees (permanent medical restriction – reached their maximum medical improvement as per their physician). Pittman only includes permanent rehab employees.

For informational purposes I am providing a brief synopsis of each EEOC case. Despite their differences and similarities, the differentiating question remains, “*Was the contractual violation or discriminatory act a result of the NRP, or not?*”

McConnell v. Donahoe, U.S. Postal Service, EEOC Case No. 520-2008-00053X

Sandra McConnell is a carrier who was injured on the job and has an approved OWCP claim. In 2006, as part of the National Reassessment Process (NRP), McConnell was “reassessed”. In Phase 1 of the reassessment process employees were asked to provide a medical update describing their work limitation tolerances (medical restrictions). In Phase 2 of the process, the USPS made “operationally necessary”, “medically suitable”, “available work” determinations. Ms. McConnell had been working in a rehab job offer for over eight years before she was reassessed. As a result of the NRP Phase 2 assessment, McConnell was stripped of her job offer

and ordered to go home. She was told “no work available”. Many of our APWU members with approved OWCP claims suffered a similar fate. They too were told no “operationally necessary work” was available to accommodate their medical restrictions as a result of the National Reassessment Process. They were also ordered to go home, or afforded less work hours despite having an accepted medically suitable job offer that they had been working.

Ms. McConnell filed a class action discrimination complaint under the Rehabilitation Act on behalf of all USPS workers affected by the NRP. The McConnell class complaint raised four claims: (1) the NRP fails to provide class members with reasonable accommodations; (2) the NRP wrongfully discloses the medical information of class members; (3) the NRP creates a hostile workplace environment for class members; and (4) the NRP has an adverse impact on class members.

The disability discrimination class action was certified by the EEOC Administrative Judge on May 30, 2008. After the USPS appealed that decision, the EEOC affirmed its certification of the Class on January 14, 2010. Sandra McConnell has been designated as the Class Agent. Former and current permanent rehabilitation or limited duty employees of the Postal Service who were subjected to the NRP between May 5, 2006, and July 1, 2011 are part of the Class whether they filed an individual complaint with the EEOC or not.

Pittman v. Donahoe, United States Postal Service, EEOC Case No. 541-2008-00188X

On August 19, 2002, Edmond C. Walker, a Temporary Rural Carrier Relief, the original Class Agent in what is now known as the Pittman case, filed a complaint on August 19, 2002. Walker alleged that, since April 2000, the Postal Service was committing discriminatory acts against its disabled employees. On May 12, 2005 an Administrative Judge certified the Class. The USPS appealed, and on March 18, 2008 the EEOC ordered the Postal Service to process the Class Complaint. The Class consists of all current and former postal employees who between March 24, 2000 and December 31, 2012 were classified as permanent rehabilitation employees whether they filed an individual complaint with the EEOC or not. Last year Edmund Walker was replaced by R.J Pittman as the Class Agent.

The ‘Pittman’ case raised the following claims:

1. Placing disabled individuals in permanent rehabilitation positions without engaging in the interactive process as required by law;
2. Restricting disabled individuals who are placed in permanent rehabilitation positions to limited work hours without any medical justification and without consulting the individual with a disability;
3. Fail(ing) to allow individuals with a disability, who have been placed in permanent rehabilitation positions, to work the number of hours determined appropriate by the individual and his/her physician and which are available; and

4. Fail(ing) to allow individuals with a disability, who have been placed in permanent rehabilitation positions, to use assistive devices in the workplace to accommodate their disabilities, including but not limited to, electric scooters, notwithstanding that said assistive devices pose no threat to safety or inconvenience in the workplace.

This claim was later analyzed to include denial of overtime.

Without admitting liability, the Postal Service agreed to pay the Class \$17.25 million to resolve the claims of 40,898 Potential Class Members. Many are members of the APWU, who like Walker and Pittman were subjected to similar discriminatory acts.

As indicated previously, potential class members of the Pittman case should carefully read the details contained in the Claim and Release Form, and the information provided in the cautionary APWU notice before making a decision about claim participation. Grievances and other options of relief may be affected by the settlement.