

§ 32.24 Request for a hearing.

(a) A claimant may, within thirty (30) days after notification of ineligibility by the Bureau, request the Bureau to reconsider its finding of ineligibility. The Bureau shall provide the claimant the opportunity for an oral hearing which shall be held within 60 days after the request for reconsideration. The claimant may waive the oral hearing and present written evidence to the Bureau within 60 days after the request. The request for hearing shall be made to the Director, Public Safety Officers' Benefits Program, BJA, Washington, DC 20531.

(b) If requested, the oral hearing shall be conducted before a hearing officer authorized by the Bureau to conduct the hearing in any location agreeable to the claimant and the hearing officer.

(c) In conducting the hearing, the hearing officer shall not be bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by chapter 5 of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), but must conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, the hearing officer shall receive such relevant evidence as may be introduced by the claimant and shall, in addition, receive such other evidence as the hearing officer may determine to be necessary or useful in evaluating the claim. Evidence may be presented orally or in the form of written statements and exhibits. The hearing shall be recorded, and the original of the complete transcript shall be made a part of the claims record.

(d) Pursuant to sections 805, 806 and 1205(a) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3786, 3787 and 3796c, the hearing officer may, whenever necessary:

- (1) Issue subpoenas;
- (2) Administer oaths;
- (3) Examine witnesses; and
- (4) Receive evidence at any place in the United States.

(e) If the hearing officer believes that there is relevant and material evidence available which has not been presented at the hearing, the hearing officer may adjourn the hearing and, at any time

prior to mailing the decision, reopen the hearing for the receipt of such evidence.

(f) A claimant may withdraw his or her request for a hearing at any time prior to the mailing of the decision by written notice to the hearing officer so stating, or by orally so stating at the hearing. A claimant shall be deemed to have abandoned his or her request for a hearing if he or she fails to appear at the time and place set for the hearing, and does not, within 10 days after the time set for the hearing, show good cause for such failure to appear.

(g) The hearing officer shall, within 30 days after receipt of the last piece of evidence relevant to the proceeding, make a determination of eligibility. The determination shall set forth the findings of fact and conclusions of law supporting the determination. The hearing officer's determination shall be the final agency decision, except when it is reviewed by the Director under paragraphs (h) or (i) of this section.

(h)(1) The Director may, on his or her own motion, review a determination made by a hearing officer. If the BJA Director decides to review the determination, he or she shall:

(i) Inform the claimant of the hearing officer's determination and the BJA Director's decision to review that determination; and

(ii) Give the claimant 30 days to comment on the record and offer new evidence or argument on the issues in controversy.

(2) The BJA Director, in accordance with the facts found on review, may affirm or reverse the hearing officer's determination. The BJA Director's determination shall set forth the findings of fact and conclusions of law supporting the determination. The BJA Director's determination shall be the final agency decision.

(i)(1) A claimant determined ineligible by a hearing officer under paragraph (g) of this section may, within 30 days after notification of the hearing officer's determination:

(i) Request the BJA Director to review the record and the hearing officer's determination; and

(ii) Comment on the record and offer new evidence or argument on the issues in controversy.

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(2) The BJA Director shall make the final agency determination of eligibility within 30 days after expiration of the comment period. The notice of final determination shall set forth the findings of fact and conclusions of law supporting the determination. The BJA Director's determination shall be the final agency decision.

(j) No payment of any portion of a death or permanent and total disability benefit, except interim death benefits payable under §32.16, shall be made until all hearings and reviews which may affect that payment have been completed.

NATIONAL PROGRAMS FOR FAMILIES OF PUBLIC SAFETY OFFICERS WHO HAVE DIED IN THE LINE OF DUTY

§ 32.25 National programs.

The Director is authorized and directed to use up to \$150,000 of the funds appropriated for this part to establish national programs to assist the families of public safety officers who have died in the line of duty.

Subpart B—Public Safety Officers' Educational Assistance

SOURCE: 62 FR 37716, July 15, 1997, unless otherwise noted.

§ 32.31 Purpose.

This subpart implements the Federal Law Enforcement Dependents Assistance Act of 1996, as amended by the Police, Fire, and Emergency Assistance Act of 1998, which authorizes the payment of financial assistance for the purpose of higher education to the dependents of public safety officers who are found, under the provisions of subpart A of this part, to have died as a direct and proximate result of a personal injury sustained in the line of duty, or to have been permanently and totally disabled as the direct result of a catastrophic injury sustained in the line of duty.

[64 FR 49953, Sept. 14, 1999]

§ 32.32 Definitions.

For purposes of this subpart:

(a) The Act means the Federal Law Enforcement Dependents Assistance

Act of 1996, Public Law 104-238, Oct. 3, 1996, as amended by the Police, Fire, and Emergency Assistance Act of 1998, Public Law 104-238, codified as Subpart 2 of Part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3796d *et seq.*

(b)(1) *Bureau* means the Bureau of Justice Assistance of the Office of Justice Programs, which is authorized to implement the provisions of this subpart.

(2) *PSOB* means the Public Safety Officers' Benefits program administered by the Bureau under subpart A of this part.

(3) *PSOEA* means the Public Safety Officers' Educational Assistance program administered by the Bureau under this subpart.

(c) *Public safety officer* is an officer as defined in §32.2(j), with respect to whom PSOB benefits have been approved under subpart A of this part on account of the officer's death or disability in the line of duty.

(d) *Child* means any person who was the biological, adopted, or posthumous child, or the stepchild, of a public safety officer at the time of the officer's death or disabling injury with respect to which PSOB benefits were approved under subpart A of this part. A stepchild must meet the provisions set forth in §32.15.

(e) *Spouse* means the husband or wife of a deceased or permanently and totally disabled officer at the time of the officer's death or disabling injury with respect to which PSOB benefits were approved under subpart A of this part, and includes a spouse living apart from the officer at that time for any reason.

(f) *Dependent* means the child or spouse of any eligible public safety officer.

(g) *Program of education* means any curriculum or any combination of unit courses or subjects pursued at an eligible educational institution, which generally is accepted as necessary to fulfill requirements for the attainment of a predetermined and identified educational, professional, or vocational objective. It includes course work for