

§ 32.3

28 CFR Ch. I (7-1-05 Edition)

(w) *Stepchild* means a child of the officer's spouse who was living with, dependent for support on, or otherwise in a parent-child relationship, as set forth in § 32.13(b), with the officer at the time of the officer's death. The relationship of stepchild is not terminated by the divorce, remarriage, or death of the stepchild's natural or adoptive parent.

(x) *Student* means:

(1) An individual under 23 years of age who has not completed four years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is:

(i) A school or college or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof;

(ii) A school or college or university which has been accredited by a State or by a State recognized or nationally recognized accrediting agency or body;

(iii) A school or college or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited for credit on the same basis as if transferred from an institution so accredited; or

(iv) An additional type of educational or training institution as defined by the Secretary of Labor.

(2) An individual is deemed to be a student during an interim between school years if the interim is not more than 4 months and if the student shows to the satisfaction of the Bureau, that the student intends to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or during periods of reasonable duration during which, in the judgment of the Bureau, the student is prevented by factors beyond the student's control from pursuing the student's education. A student whose 23rd birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period.

(y) *Spouse* means the husband or wife of the deceased officer at the time of the officer's death, and includes a spouse living apart from the officer at

the time of the officer's death for any reason.

(z) *Dependent* means any individual who was substantially reliant for support upon the income of the deceased public safety officer.

(aa) *Intoxication* means a disturbance of mental or physical faculties:

(1) Resulting from the introduction of alcohol into the body as evidenced by—

(i) A blood alcohol level of .20 per centum or greater; or

(ii) A blood alcohol level of at least .10 per centum unless the Bureau receives convincing evidence that the public safety officer was not acting in an intoxicated manner immediately prior to the officer's death or catastrophic personal injury which resulted in permanent and total disability; or

(2) Resulting from drugs or other substances in the body.

(bb) *Rescue* means the provision of first response emergency medical treatment, transportation of persons in medical distress and under emergency conditions to medical care facilities, or search and rescue assistance in locating and extracting from danger persons lost, missing, or in imminent danger of bodily harm.

(cc) *Support* means food, shelter, clothing, ordinary medical expenses, and other ordinary and customary items for maintenance of the person supported.

[57 FR 24913, June 11, 1992, as amended at 61 FR 33657, June 28, 1996; 62 FR 37715, July 15, 1997]

OFFICERS COVERED

§ 32.3 Coverage.

(a) When the Bureau determines under this part, that a public safety officer, as defined in § 32.2(h) has died or become permanently and totally disabled as the direct and proximate result of an injury sustained in the line of duty, the Bureau shall pay a benefit of \$100,000, adjusted in accordance with § 32.3 (b) or (c), subject to the conditions set forth in § 32.6. Payment of death benefits shall be made in the order specified in § 32.10.

(b) For the death benefit program, on October 1 of each fiscal year after October 15, 1988, the Bureau shall adjust the

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level of the death benefit payable immediately before such October 1 under paragraph (a) of this section, to reflect the annual percentage change in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, occurring in the 1-year period ending on June 1 immediately preceding such October 1.

(c) For the disability benefit program, the annual cost of living adjustment shall be made in accordance with the effective date of the enactment of this program, *viz.* November 29, 1990.

(d) The amount payable under paragraph (a) of this section with respect to the death or permanent and total disability of a public safety officer shall be the amount payable under paragraphs (b) or (c) of this section as of the date of death or permanent and total disability of such officer, as the case may be.

### § 32.4 Reasonable doubt of coverage.

The Bureau shall resolve any reasonable doubt arising from the circumstances of the officer's death or permanent and total disability in favor of payment of the death or disability benefit.

### § 32.5 Findings of State, local, and Federal agencies.

The Bureau will give substantial weight to the evidence and findings of fact presented by State, local, and Federal administrative and investigative agencies. The Bureau will request additional assistance or conduct its own investigation when it believes that the existing evidence does not provide the Bureau with a rational basis for a decision on a material element of eligibility.

### § 32.6 Conditions on payment.

(a) No benefit shall be paid—

(1) If the death or permanent and total disability was caused by the intentional misconduct of the public safety officer or by such officer's intention to bring about the officer's death or injury;

(2) If the public safety officer was voluntarily intoxicated at the time of the officer's death or catastrophic personal injury;

(3) If the public safety officer was performing the officer's duties in a grossly negligent manner at the time of the officer's death or catastrophic personal injury;

(4) To any individual who would otherwise be entitled to a benefit under this part if such individual's actions were a substantial contributing factor to the death of the public safety officer; or

(5) To any individual employed in a capacity other than a civilian capacity.

(b) The Act applies to State and local public safety officers killed in the line of duty on or after September 29, 1976; federal public safety officers killed on or after October 12, 1984; rescue squad or public emergency employees killed in the line of duty on or after October 15, 1986; and to each of these classes of officers permanently and totally disabled as a result of a catastrophic personal injury received in the line of duty on or after November 29, 1990.

### § 32.7 Intentional misconduct of the officer.

The Bureau will consider at least the following factors in determining whether death or permanent and total disability was caused by the intentional misconduct of the officer:

(a) Whether the conduct was in violation of rules and regulations of the employer, or ordinances and laws, and—

(1) Whether the officer knew the conduct was prohibited and understood its import;

(2) Whether there was a reasonable excuse for the violation; or

(3) Whether the rule violated is habitually observed and enforced;

(b) Whether the officer had previously engaged in similar misconduct;

(c) Whether the officer's intentional misconduct was a substantial factor in the officer's death or permanent and total disability; and

(d) Whether there was an intervening force which would have independently caused the officer's death or permanent and total disability and which would not otherwise prohibit payment of a benefit pursuant to this part.