

Department of Justice

§ 32.7

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.