

Department of Justice

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(1) The nature of the services provided by the petitioner;

(2) The complexity of the claim;

(3) The level of skill and competence required to provide the petitioner's services;

(4) The amount of time spent on the claim by the petitioner;

(5) The results achieved as a function of the petitioner's services;

(6) The level of administrative or judicial review to which the claim was pursued and the point at which the petitioner entered the proceedings;

(7) The ordinary, usual, or customary fee charged by other persons (and by the petitioner) for services of a similar nature; and

(8) The amount authorized by the PSOB Office in similar cases.

(d) No amount shall be authorized under paragraph (a) of this section for—

(1) Any stipulated-, percentage-, or contingency fee;

(2) Services at a rate in excess of that specified in 5 U.S.C. 504(b)(1)(A)(ii) (Equal Access to Justice Act); or

(3) Services provided in connection with—

(i) Obtaining or providing evidence or information previously obtained by the PSOB determining official;

(ii) Preparing the petition; or

(iii) Explaining or delivering an approved claim to the claimant.

(e) Upon a petitioner's failure (without reasonable justification or excuse) to pursue in timely fashion his filed petition under paragraph (a) of this section, the Director may, at his discretion, deem the same to be abandoned, as though never filed. Not less than thirty-three days prior thereto, the PSOB Office shall serve the petitioner and the claimant with notice of the Director's intention to exercise such discretion.

(f) Upon its authorizing or not authorizing the payment of any amount under paragraph (a) of this section, the PSOB Office shall serve notice of the same upon the claimant and the petitioner. Such notice shall specify the amount, if any, the petitioner is authorized to charge the claimant and the basis of the authorization.

(g) No agreement for representative services in connection with a claim

shall be valid if the agreement provides for any consideration other than under this section. A person's receipt of consideration for such services other than under this section may, among other things, be the subject of referral by BJA to appropriate professional, administrative, disciplinary, or other legal authorities.

§ 32.8 Exhaustion of administrative remedies.

No determination or negative disability finding that, at the time made, may be subject to a request for a Hearing Officer determination, a motion for reconsideration, or a Director appeal, shall be considered a final agency determination for purposes of judicial review, unless all administrative remedies have been exhausted.

Subpart B—Death Benefit Claims

§ 32.11 Scope of subpart.

Consistent with § 32.1, this subpart contains provisions applicable to claims made under the Act—

(a) At 42 U.S.C. 3796(a); or

(b) At 42 U.S.C. 3796c-1 or Public Law 107-37, with respect to a public safety officer's death.

§ 32.12 Time for filing claim.

(a) Unless, for good cause shown, the Director extends the time for filing, no claim shall be considered if it is filed with the PSOB Office after the later of—

(1) Three years after the public safety officer's death; or

(2) One year after the receipt or denial of any benefits described in § 32.15(a)(1)(i) (or the receipt of the certification described in § 32.15(a)(1)(ii)).

(b) A claimant may file with his claim such supporting evidence and legal arguments as he may wish to provide.

§ 32.13 Definitions.

Adoptive parent of a public safety officer means any individual who (not being a step-parent), as of the injury date, was the legally-adoptive parent of the public safety officer, or otherwise was in a child-parent relationship with him.

Beneficiary of a life insurance policy of a public safety officer—An individual (living or deceased on the date of death of the public safety officer) is designated as beneficiary of a life insurance policy of such officer as of such date, only if the designation is, as of such date, legal and valid (as a designation of beneficiary of a life insurance policy) and unrevoked (by such officer or by operation of law), except that—

(1) Any designation of an individual (including any designation of the biological or adoptive offspring of such individual) made in contemplation of such individual's marriage (or purported marriage) to such officer shall be considered to be revoked by such officer as of such date of death if the marriage (or purported marriage)—not having taken place as of such date of death—did not take place when scheduled, unless preponderant evidence demonstrates that—

(i) The alteration in schedule was for reasons other than personal differences between the officer and the individual; or

(ii) No such revocation was intended by the officer; and

(2) Any designation of a spouse (or purported spouse) made in contemplation of or during such spouse's (or purported spouse's) marriage (or purported marriage) to such officer (including any designation of the biological or adoptive offspring of such individual) shall be considered to be revoked by such officer as of such date of death if the spouse (or purported spouse) is divorced from such officer after the date of designation and before such date of death, unless preponderant evidence demonstrates that no such revocation was intended by the officer.

Beneficiary under the Act, at 42 U.S.C. 3796(a)(4)(A)—An individual (living or deceased on the date of death of the public safety officer) is designated, by such officer (and as of such date), as beneficiary under the Act, at 42 U.S.C. 3796(a)(4)(A), only if the designation is, as of such date, legal and valid and unrevoked (by such officer or by operation of law), except that—

(1) Any designation of an individual (including any designation of the biological or adoptive offspring of such individual) made in contemplation of

such individual's marriage (or purported marriage) to such officer shall be considered to be revoked by such officer as of such date of death if the marriage (or purported marriage)—not having taken place as of such date of death—did not take place when scheduled, unless preponderant evidence demonstrates that—

(i) The alteration in schedule was for reasons other than personal differences between the officer and the individual; or

(ii) No such revocation was intended by the officer; and

(2) Any designation of a spouse (or purported spouse) made in contemplation of or during such spouse's (or purported spouse's) marriage (or purported marriage) to such officer (including any designation of the biological or adoptive offspring of such spouse (or purported spouse)) shall be considered to be revoked by such officer as of such date of death if the spouse (or purported spouse) is divorced from such officer subsequent to the date of designation and before such date of death, unless preponderant evidence demonstrates that no such revocation was intended by the officer.

Cardiovascular disease includes heart attack and stroke.

Child-parent relationship means a relationship between a public safety officer and another individual, in which the individual (other than the officer's biological or legally-adoptive parent) has the role of parent, as shown by convincing evidence.

Circumstances other than engagement or participation means—

(1) An event or events; or

(2) An intentional risky behavior or intentional risky behaviors.

Commonly accepted means generally agreed upon within the medical profession.

Competent medical evidence to the contrary—The presumption raised by the Act, at 42 U.S.C. 3796(k), is overcome by competent medical evidence to the contrary, when evidence indicates to a degree of medical probability that circumstances other than any engagement or participation described in the Act, at 42 U.S.C. 3796(k)(1), considered in combination (as one circumstance) or alone, were a substantial factor in

bringing the heart attack or stroke about.

Direct and proximate result of a heart attack or stroke—A death results directly and proximately from a heart attack or stroke if the heart attack or stroke is a substantial factor in bringing it about.

Engagement in a situation—A public safety officer is engaged in a situation only when, within his line of duty—

- (1) He is in the course of actually—
 - (i) Engaging in law enforcement;
 - (ii) Suppressing fire;
 - (iii) Responding to a hazardous-materials emergency;
 - (iv) Performing rescue activity;
 - (v) Providing emergency medical services; or
 - (vi) Performing disaster relief activity; or
 - (vii) Otherwise responding to a fire, rescue, or police emergency; and

(2) The public agency he serves (or the relevant government) legally recognizes him to be in such course (or, at a minimum, does not deny (or has not denied) him so to be).

Event includes occurrence, but does not include any engagement or participation described in the Act, at 42 U.S.C. 3796(k)(1).

Excessive consumption of alcohol—An individual is an excessive consumer of alcohol if he consumes alcohol in amounts commonly accepted to be associated with substantially-increased risk of cardiovascular disease.

Execution of a designation of beneficiary under the Act, at 42 U.S.C. 3796(a)(4)(A) means the legal and valid execution, by the public safety officer, of a writing that, designating a beneficiary, expressly, specifically, or unmistakably refers to—

- (1) The Act (or the program it creates); or
- (2) All the death benefits with respect to which such officer lawfully could designate a beneficiary (if there be no writing that satisfies paragraph (1) of this definition).

Execution of a life insurance policy means, with respect to a life insurance policy, the legal and valid execution, by the individual whose life is insured thereunder, of—

- (1) The approved application for coverage;

(2) A designation of beneficiary; or

(3) A designation of the mode of benefit.

Medical probability—A fact is indicated to a degree of medical probability, when, pursuant to a medical assessment, the fact is indicated by a preponderance of such evidence as may be available.

Most recently executed designation of beneficiary under the Act, at 42 U.S.C. 3796(a)(4)(A) means the most recently executed such designation that, as of the date of death of the public safety officer, designates a beneficiary.

Most recently executed life insurance policy of a public safety officer means the most recently executed policy insuring the life of a public safety officer that, being legal and valid (as a life insurance policy) upon its execution, as of the date of death of such officer—

- (1) Designates a beneficiary; and
- (2) Remains legally in effect.

Nonroutine strenuous physical activity—Except as excluded by the Act, at 42 U.S.C. 3796(l), nonroutine strenuous physical activity means line of duty activity that—

- (1) Is not performed as a matter of routine; and
- (2) Entails an unusually-high level of physical exertion.

Nonroutine stressful or strenuous physical activity means nonroutine stressful physical activity or nonroutine strenuous physical activity.

Nonroutine stressful physical activity—Except as excluded by the Act, at 42 U.S.C. 3796(l), nonroutine stressful physical activity means line of duty activity that—

- (1) Is not performed as a matter of routine;
- (2) Entails non-negligible physical exertion; and
- (3) Occurs—

(i) With respect to a situation in which a public safety officer is engaged, under circumstances that objectively and reasonably—

(A) Pose (or appear to pose) significant dangers, threats, or hazards (or reasonably-foreseeable risks thereof), not faced by similarly-situated members of the public in the ordinary course; and

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(B) Provoke, cause, or occasion an unusually-high level of alarm, fear, or anxiety; or

(ii) With respect to a training exercise in which a public safety officer participates, under circumstances that objectively and reasonably—

(A) Simulate in realistic fashion situations that pose significant dangers, threats, or hazards; and

(B) Provoke, cause, or occasion an unusually-high level of alarm, fear, or anxiety.

Parent of a public safety officer means a public safety officer's surviving—

(1) Biological or adoptive parent whose parental rights have not been terminated, as of the injury date; or

(2) Step-parent.

Participation in a training exercise—A public safety officer participates (as a trainer or trainee) in a training exercise only if it is a formal part of an official training program whose purpose is to train public safety officers in, prepare them for, or improve their skills in, particular activity or actions encompassed within their respective lines of duty.

Public safety agency, organization, or unit means a department or agency (or component thereof)—

(1) In which a public safety officer serves in an official capacity, with or without compensation, as such an officer (of any kind but disaster relief worker); or

(2) Of which a public safety officer is an employee, performing official duties as described in the Act, at 42 U.S.C. 3796b(9)(B) or (C), as a disaster relief worker.

Risky behavior means—

(1) Failure (without reasonable justification or excuse) to undertake treatment—

(i) Of any commonly-accepted cardiovascular-disease risk factor associated with clinical values, where such risk factor is—

(A) Known (or should be known) to be present; and

(B) Present to a degree that substantially exceeds the minimum value commonly accepted as indicating high risk;

(ii) Of any disease or condition commonly accepted to be associated with substantially-increased risk of cardiovascular disease, where such associated

disease or condition is known (or should be known) to be present; or

(iii) Where a biological parent, -sibling, or -child, is known to have (or have a history of) cardiovascular disease;

(2) Smoking an average of more than one-half of a pack of cigarettes (or its equivalent) per day;

(3) Excessive consumption of alcohol;

(4) Consumption of controlled substances included on Schedule I of the drug control and enforcement laws (see 21 U.S.C. 812(a)), where such consumption is commonly accepted to be associated with increased risk of cardiovascular disease; or

(5) Abuse of controlled substances included on Schedule II, III, IV, or V of the drug control and enforcement laws (see 21 U.S.C. 812(a)), where such abuse is commonly accepted to be associated with increased risk of cardiovascular disease.

Step-parent of a public safety officer means a current or former spouse of the legally-adoptive or biological parent (living or deceased) of a public safety officer conceived (or legally adopted) by that parent before the marriage of the spouse and the parent, which spouse (not being a legally-adoptive parent of the officer), as of the injury date,

(1) Received over half of his support from the officer;

(2) Had as his principal place of abode the home of the officer and was a member of the officer's household; or

(3) Was in a child-parent relationship with the officer.

Undertaking of treatment—An individual undertakes treatment, when he consults with a physician licensed to practice medicine in any jurisdiction described in the Act, at 42 U.S.C. 3796b(8), and complies substantially with his recommendations.

§ 32.14 PSOB Office determination.

(a) Upon its approving or denying a claim, the PSOB Office shall serve notice of the same upon the claimant (and upon any other claimant who may have filed a claim with respect to the same public safety officer). In the event of a denial, such notice shall—

(1) Specify the factual findings and legal conclusions that support it; and