

§ 32.14

28 CFR Ch. I (7-1-08 Edition)

(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

Department of Justice

§ 32.21

(2) Provide information as to requesting a Hearing Officer determination.

(b) Upon a claimant's failure (without reasonable justification or excuse) to pursue in timely fashion the determination, by the PSOB Office, of his filed claim, the Director may, at his discretion, deem the same to be abandoned. Not less than thirty-three days prior thereto, the PSOB Office shall serve the claimant with notice of the Director's intention to exercise such discretion.

§ 32.15 Prerequisite certification.

(a) Except as provided in the Act, at 42 U.S.C. 3796c-1 or Public Law 107-37, and unless, for good cause shown, the Director grants a waiver, no claim shall be approved unless the following (which shall be necessary, but not sufficient, for such approval) are filed with the PSOB Office:

(1) Subject to paragraph (b) of this section, a certification from the public agency in which the public safety officer served (as of the injury date) that he died as a direct and proximate result of a line of duty injury, and either—

(i) That his survivors (listed by name, address, relationship to him, and amount received) have received (or legally are entitled to receive) the maximum death benefits legally payable by the agency with respect to deaths of public safety officers of his kind, rank, and tenure; or

(ii) Subject to paragraph (c) of this section, that the agency is not legally authorized to pay—

(A) Any benefits described in paragraph (a)(1)(i) of this section, to any person; or

(B) Any benefits described in paragraph (a)(1)(i) of this section, to public safety officers of the kind, rank, and tenure described in such paragraph;

(2) A copy of any rulings made by any public agency that relate to the officer's death; and

(3) A certification from the claimant listing every individual known to him who is or might be the officer's child, spouse, or parent.

(b) The provisions of paragraph (a)(1) of this section shall also apply with respect to every public agency that legally is authorized to pay death bene-

fits with respect to the agency described in that paragraph.

(c) No certification described in paragraph (a)(1)(ii) of this section shall be deemed complete unless it—

(1) Lists every public agency (other than BJA) that legally is authorized to pay death benefits with respect to the certifying agency; or

(2) States that no public agency (other than BJA) legally is authorized to pay death benefits with respect to the certifying agency.

§ 32.16 Payment.

(a) No payment shall be made to (or on behalf of) more than one individual, on the basis of being a public safety officer's parent as his mother, or on that basis as his father. If more than one parent qualifies as the officer's mother, or as his father, payment shall be made to the one with whom the officer considered himself, as of the injury date, to have the closest relationship, except that any biological or legally-adoptive parent whose parental rights have not been terminated as of the injury date shall be presumed rebuttably to be such one.

(b) Any amount payable with respect to a minor or incompetent shall be paid to his legal guardian, to be expended solely for the benefit of such minor or incompetent.

§ 32.17 Request for Hearing Officer determination.

In order to exhaust his administrative remedies, a claimant seeking relief from the denial of his claim shall request a Hearing Officer determination under subpart E of this part. Consistent with § 32.8, any denial that is not the subject of such a request shall constitute the final agency determination.

Subpart C—Disability Benefit Claims

§ 32.21 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(b); or

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