

Fire Police not eligible for Federal LODD benefits

This issue came to the forefront when State Fire Commissioner Ed Mann received some information that Fire Police may not be eligible for Federal Line of Duty Death (LODD) benefits. Clearly, there is no problem with the Pennsylvania's Workers' Compensation Coverage or the Pennsylvania LODD benefit which currently pays \$110,334.62 to survivors. The issue is with the \$311,810 benefit awarded to firefighters by the Federal Government.

The Public Safety Officers Benefit Act (PSOBA) was passed by congress and is administered by the Bureau of Justice Assistance (BJA) of the U. S. Department of Justice. The problem arises from the definitions provided in the law and their corresponding interpretation by the BJA in their regulations.

PSOBA defines a firefighter in **42 U.S.C. § 3796b(4)** as:

"firefighter" includes an individual serving as an officially recognized or designated member of a legally organized volunteer fire department

BJA defines firefighter as:

Firefighter means an individual who—

(1) Is trained in—

(i) Suppression of fire; or

(ii) Hazardous-material response; and

(2) Has the legal authority and responsibility to engage in the suppression of fire, as—

(i) An employee of the public agency he serves, which legally recognizes him to have such (or, at a minimum, does not deny (or has not denied) him to have such); or

(ii) An individual otherwise included within the definition provided in the Act, at 42 U.S.C. 3796b(4).

While it seems that everyone is still included as defined in section 2(ii) which refers back to the PSOBA definition, the BJA acts as if this regulation does not exist and the courts have supported that interpretation.

BJA also defines fire suppression as:

Suppression of fire means extinguishment, physical prevention, or containment of fire, including on-site hazard evaluation.

It might be possible that Fire Police could be included as law enforcement officers since the PSOBA defines that office as:

"law enforcement officer" means an individual involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal laws (including juvenile delinquency), including, but not limited to, police, corrections, probation, parole, and judicial officers;

Clearly, that definition could include Fire Police if a broad and inclusive definition of crime

and criminal laws included traffic laws. This not the case since the BJA rewrote the definition and interprets the law such that you must have arrest powers and be engaged in enforcing criminal laws to be eligible.

The BJA definition is:

Law enforcement means enforcement of the criminal laws, including—

- (1) Control or reduction of crime or of juvenile delinquency;
- (2) Prosecution or adjudication of individuals who are alleged or found to have violated such laws;
- (3) Prison security activity; and
- (4) Supervision of individuals on parole or probation for having violated such laws.

Excerpts from court cases show how the regulations are enforced.

Christopher Kangas was a junior firefighter who was killed while riding his bicycle to a fire:

In sum, we hold that BJA’s interpretation of the term “firefighter” as one who is “authorized to actively engage in the suppression of fires” is permissible in light of the ordinary, common meaning of the term “firefighter” and the legislative history of PSOBA. We also hold that BJA did not err in its determination that Christopher was not a “firefighter” under PSOBA, given that Pennsylvania state law does not authorize him to participate in firefighting activities and, instead, expressly limits his activities to non-firefighting activities. (emphasis supplied)

James E. Lafferty was a Fire Police Captain who was previously a fire chief. He obviously had extensive training as a firefighter, but that meant nothing:

The record shows that FPC Lafferty was trained as a fire police officer and had risen to be a Fire Police Captain at the time of his death. His duties and responsibilities included of (sic) directing traffic at fires, traffic accidents and other emergency situations. He was also responsible for staging fire trucks and emergency vehicles at the scene of an emergency incident. FPC Lafferty was a sworn special police officer who did not carry a weapon or have arrest authority. Although FPC Lafferty had previously been a fire fighter, under his position at the time of his death he was not trained as a firefighter nor did he engage in any fire suppression or rescue efforts. The main function of fire police officers is to keep the public and emergency personnel safe. (emphasis supplied)

Deputy Sheriff Nancy Hawkins was a volunteer in Nevada. She was asked by the Sheriff to assist in the rounding up of wild horses that had been trampling crops. She was authorized to carry a weapon and to arrest criminals. Her survivors were denied benefits:

An officer must have more than potential statutory authority and a ceremonial swearing-in to be considered as being involved in crime and juvenile delinquency control or reduction, or criminal law enforcement. Rather, the officer must be actually appointed for and authorized or obligated to fight crime or perform criminal law enforcement duties on behalf of the police agency that he or she serves. Here, Sheriff Swinney appointed and expected Mrs.

Hawkins to perform only those duties related to protecting private property and perhaps to the enforcement of civil law. Thus, we must conclude that she was not a "law enforcement officer" for purposes of the Act. (emphasis supplied)

As you can see, even if she was properly trained and sworn, she would not have been awarded benefits. I include this to put aside the opinion that training Fire Police in suppression would enable us to receive an award. While that may still be true, this case would seem to rule against it.

So, what happened?

An analogy may help. It is like Congress decided to award benefits to football players. The BJA interprets football players as those on the field that actually handle the football. The other players are "non football handling activities" and are not intended to be covered by Congress. Therefore, the only football players by BJA's definition would be the quarterback, running backs and receivers. The rest would be doing "non football handling activities." The blockers and the entire defense would not be covered because they do not handle the football or are not "trained" to handle the football. Further they may decide that only football players who are trained to advance the ball downfield are covered leaving out the center, kickers and holders. By definition, tackling is not playing football.

So, what do we do about it?

First, we need more information. Clearly, since this is a problem involving all 50 states, Pennsylvania alone cannot bring about change. We simply do not have enough congressmen to bring that about. We need to engage other states and make their firefighters aware of the problem. To do that, we need to see the size of the problem by gaining more information.

We need to know about every federal LODD claim paid or denied since 2000. Current information is necessary because changes in regulations provide a basis for different results. Please send any paperwork about a claim whether denied or paid to Jack Urling, 502 Kentwood Drive, Mechanicsburg, PA 17050.

Once we have the information, we will reconstitute the committee and begin an effort to introduce legislation to change the way BJA looks at claims. We hope to force inclusion of all firefighters (as Congress seemed to have originally intended) and make that legislation retroactive so those who have been denied can receive the benefits they rightfully deserve.