

## **FIRE POLICE NOT ELIGIBLE FOR FEDERAL LODD BENEFITS**

State Fire Commissioner Ed Mann received 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. In both cases, Fire Police receive the same treatment as other firefighters. Of concern is the \$311,810 benefit awarded to volunteer 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 (or misinterpretation) by the BJA in 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).

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 included traffic laws particularly since the PSOB reads: "or enforcement of the criminal laws (including juvenile delinquency)." This is not the case since the BJA rewrote the definition and interprets the law such that you must 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 firefighter regulations have been interpreted. 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)

It has been suggested that if Fire Police receive training in suppression, they might qualify. Based on the decision in *Lafferty*, that probably would not work. It appears in *Lafferty* that even if you are trained in firefighting as he was, that training is not important to Fire Police activity or it is lost and forgotten when you become a Fire Police Officer!

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 may not have been awarded benefits. I include *Hawkins* to further address the suggestion that training Fire Police in suppression would enable us to receive an award. While that may still be true, *Hawkins* and *Lafferty* would seem to hold otherwise.

So, what happened?

An analogy may help. Imagine that Congress decided to award benefits to football players. The BJA then interprets "football players" as those on the field that actually handle the football. BJA then reasons that the other players are engaged in "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, receivers and possibly the tight end. The rest would be doing "non football handling activities." Offensive linemen 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 and blocking are 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. Even if we enlist the aid of the 13 states with Fire Police, we simply do not have enough congressmen to prevail. We need to engage other states and make their volunteer firefighters aware of the issue. To do that, we need to see the extent of the problem by gaining more information. Are rehab workers eligible? What about operators of an air wagon? If a member of a volunteer fire company is filling cylinder that fails and injures the member, is he engaged in suppression activities? Is a tanker truck (tender) driver not "trained" in suppression eligible? The answers are found only in case law.

We need to know about every federal LODD claim in any state paid or denied since 2000. Current information is necessary because changes in regulations provide a basis for different results. Contact families of those firefighters you may know who died in the line of duty. Please send any award or denial paperwork for a PSOBA claim to:

Jack Urling  
502 Kentwood Drive  
Mechanicsburg, PA 17050.

Once we have the information, we will reconstitute the Association LODD Committee and

begin an effort to introduce legislation to change the way BJA defines firefighter. 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 federal LODD benefits we believe Congress intended. Our goal is to complete our work by the end of summer so the effort for change can take place before the fall election. Please help yourself and your families and fellow firefighters by helping us!

Jack Urling  
Second Vice President