



Presumptive Duty-Related Illness for Law Enforcement

Preliminary Report

LEOFF Plan 2 Retirement Board

September 26, 2007

Key Issues

- No law enforcement presumption in WA
- Federal Government and other states recognized need for law enforcement presumption
- Scope of coverage
 - Infectious Disease
 - Heart Problems
 - Cancer

Option 1

- **Presumption for Infectious Diseases**
 - Law enforcement included under same infectious disease presumption as fire fighters
 - Coverage
 - HIV/AIDS
 - Hepatitis (all strains)
 - Meningococcal Meningitis
 - Mycobacterium Tuberculosis

Option 2

■ **Presumption for Heart Problems**

- Heart problems within 24 hours of physical exertion due to “law enforcement activities”
- Requires definition of “law enforcement activities”
- 20 states and Federal Government have law enforcement heart presumption

Option 3

■ **Presumption for Cancer**

- Requires definition of which cancers are included within presumption
- Five other states have law enforcement cancer presumption; no Federal presumption

Presumptive Duty-Related Illness for Law Enforcement

Questions?

LAW ENFORCEMENT OFFICERS' AND FIRE FIGHTERS' PLAN 2 RETIREMENT BOARD

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Presumptive Duty-Related Illnesses for Law Enforcement Officers

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September 26, 2007

1. Issue

Certain illnesses and medical conditions are presumed to be duty-related for fire fighters in the State of Washington. Although a similar presumption exists in other states for law enforcement officers, there is currently no presumption in Washington for law enforcement officers.

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3. Members Impacted

This issue impacts all of the active Law Enforcement Officers in LEOFF Plan 2. As of the September 30, 2005 Actuarial Valuation, there were 15,168 active members in LEOFF Plan 2, including 8,797 Law Enforcement Officers.

4. Current Situation

There is no occupational disease presumption for law enforcement officers in Washington State. Although the occupational disease provisions in the Workers' Compensation statutes apply to law enforcement officers, the burden of proof to qualify for benefits shifts to the member. An occupational disease presumption exists for fire fighters in Washington State.

5. Background Information and Policy Issues

A presumptive occupational disease law is a law that links a particular occupation with a disease or condition that has been shown to be a hazard associated with that occupation. As a result of this linkage, if an individual employed in the occupation covered by the presumption contracts a disease or condition that is specified in the presumptive law, then that disease or condition is presumed to have come from that occupation. In this case, the burden of proof shifts from the employee to the employer to demonstrate that the condition was not in fact associated with the occupation but with another cause.

In the case of public safety officers, particularly for fire fighters, scientific evidence has demonstrated an increased risk for heart disease, lung disease, cancer, and infectious diseases. Many states have an occupational disease presumption law that applies to at least one category of emergency response personnel. However, these presumption laws vary between states in terms of medical conditions/illnesses covered and emergency response personnel covered.

Presumptive Coverage Provisions in Washington

In 1987, the Legislature passed Engrossed Substitute Senate Bill 5801, which created a presumption that certain diseases were occupationally related for industrial insurance purposes for only fire fighters. As originally passed, this bill only included respiratory disease as an occupational disease.

The 2002 Legislature amended the definition of occupational disease to include heart problems that are experienced within seventy-two hours of exposure to smoke, fumes, or toxic substances; certain cancers; and infectious diseases.

The presumption of *cancer* as an occupational disease only applies to a fire fighter, where the cancer develops or manifests itself after the fire fighter has served at least 10 years, and was given a qualifying medical examination upon becoming a fire fighter that showed no evidence of cancer. Time served as a volunteer fire fighter does not count towards the 10 years of service required for presumptive cancer coverage. Under the 2002 legislation, the presumption of cancer only applied to the following specific types of cancer¹:

¹ The 2002 bill originally listed a broader set of cancers within the presumption than was passed in the final version of the bill. The original bill included the following types of cancer: Breast Cancer, Reproductive System Cancer, Central Nervous System Cancer, Skin Cancer, Lymphatic System Cancer, Digestive System Cancer, Hematological System Cancer, Urinary System Cancer, Skeletal System Cancer, Oral System Cancer.

- Primary Brain Cancer
- Malignant Melanoma
- Leukemia
- Non-Hodgkin's Lymphoma
- Bladder Cancer
- Ureter Cancer
- Kidney Cancer

The presumption of *infectious disease* as an occupational disease only applies to fire fighters who contracted the following:

- Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
- All Strains of Hepatitis
- Meningococcal Meningitis
- Mycobacterium Tuberculosis

The 2007 Legislature further expanded the occupational disease presumption for fire fighters. A presumption of occupational disease was added for heart problems that are experienced within 24 hours of strenuous physical exertion due to firefighting activities. "Firefighting activities" means fire suppression, fire prevention, emergency medical services, rescue operations, hazardous materials response, aircraft rescue, and training and other assigned duties related to emergency response.

Certain cancers were also added to the list of cancers presumed to be occupational diseases. The cancers added included:

- Prostate Cancer, diagnosed prior to the age of 50
- Colorectal cancer
- Multiple Myeloma
- Testicular cancer

The presumption of occupational disease may be rebutted by a preponderance of evidence, including, but not limited to use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and exposure from other employment or non-employment activities. Since July 1, 2003, the presumption of occupational disease has not applied to a fire fighter who develops a heart or lung condition and who is a regular user of tobacco products or who has a history of tobacco use.

After terminating from service the presumptions are extended such that a member can qualify for benefits for a period of three calendar months for each year of service, out to a maximum of sixty months following the last date of employment. For example, a member who separates from service after a 10-year career will be covered under the presumption for 2 ½ years (30 months) after the date of separation from employment.

The 2007 Legislation also included provisions for the recovery of litigation costs and fees. When a determination involving the presumption of occupational disease for fire fighters is appealed to the Board of Industrial Insurance Appeals or to any court and the final decision allows the claim for benefits, the Board of Industrial Insurance Appeals or the court must order that all reasonable costs of the appeal be paid to the fire fighter or his or her beneficiary.

Presumptive Coverage Provisions in Other Jurisdictions

The presumptions vary from state to state in terms of what occupational diseases are covered for each profession. An initial review of the workers' compensation, pension, and employment statutes of all 50 states shows that most of the states have an explicit occupational disease presumption in statute. At least 38 states (76%) have an explicit occupational disease presumption for fire fighters and 28 states (56%) have an explicit occupational disease presumption for law enforcement. Several states also have included groups such as corrections officers, state police, and volunteer fire fighters.

In the 27 states with a law enforcement presumption, the most commonly occurring presumptions are for heart attack or cardiovascular disease which is covered by 20 states and respiratory or lung disease which is covered by 11 states. A handful of states also have a presumption for hypertension (6), cancer (5), and stroke (3).

Sixteen of the states with a law enforcement presumption include one or more occupational illness caused by infectious disease. In most cases, occupational disease is specifically defined by illness type; however some states use a general definition of occupational disease which broadly includes the specific diseases covered in other states. The most common occupational diseases covered by a presumption for law enforcement include: hepatitis (9), tuberculosis (7), HIV/AIDS (6), meningococcal meningitis (3), and other or generally defined (6).

Table 1: Presumption Coverage for Law Enforcement Officers details the occupation disease coverage by type of occupational disease for each of the 27 states that have an explicit law enforcement presumption in statute.

Table 1: Presumption Coverage for Law Enforcement Officers

State	Heart	Respiratory/Lung	Hypertension	Cancer	Stroke	Hepatitis	Tuberculosis	Other or Generally Defined	HIV/AIDS	Meningococcal Meningitis
Arizona		✓		✓						
California	✓			✓		✓	✓	✓		
Colorado						✓				
Florida	✓		✓				✓			
Hawaii	✓	✓								
Illinois	✓	✓		✓	✓		✓			
Indiana	✓	✓		✓			✓	✓	✓	✓
Iowa	✓	✓								
Kansas	✓	✓		✓						
Louisiana						✓				
Maine						✓	✓			✓
Maryland	✓		✓							
Massachusetts	✓		✓							
Michigan	✓	✓						✓		
Minnesota	✓							✓		
Nevada	✓	✓								
New Jersey	✓				✓					
New York						✓	✓		✓	
North Dakota	✓	✓	✓			✓			✓	
Ohio	✓	✓								
Oklahoma								✓		
Pennsylvania	✓				✓	✓				
Rhode Island						✓			✓	
South Carolina	✓									
Tennessee	✓		✓							
Utah						✓		✓	✓	
Vermont	✓									
Virginia	✓	✓	✓			✓	✓		✓	✓
Total by Type	20	11	6	5	3	10	7	6	5	3

Presumptive Coverage Provisions at Federal Level – PSOB

The Public Safety Officers' Benefits (PSOB) Act was enacted in 1976 to assist in the recruitment and retention of law enforcement officers and fire fighters. State and local law enforcement officers and fire fighters are covered for line-of-duty deaths occurring on or after September 29, 1976.² As defined by Congress in Public Law 90-351 (Sec. 1217), a public safety officer includes individuals serving a public agency in an official capacity, with or without compensation, as a law enforcement officer or fire fighter.

The PSOB Program provides death benefits in the form of a one-time financial payment to the eligible survivors of public safety officers whose deaths are the direct and proximate result of a traumatic injury sustained in the line of duty. Beneficiaries of the PSOB Death Benefits Program must comply with the PSOB Office's administrative review process by producing sufficient evidence to show that the public safety officer died as the direct and proximate result of a personal injury sustained in the line of duty. The PSOB Act only covers deaths resulting from traumatic injuries sustained in the line of duty. The PSOB Act does not have extensive coverage for occupational diseases, however, heart attack deaths are covered in some instances.

On December 15th, 2003, President Bush signed into law the Hometown Heroes Survivor Benefits Act (S. 459 / H.R. 919), which expanded the PSOB program to cover public safety officers who die of heart attacks or strokes in the line of duty. The death benefit is payable to the survivors of a public safety officer who "has died as the direct and proximate result of a personal injury sustained in the line of duty." See Appendix A: PSOB Statute – Presumption for Heart Attack and Stroke.

Prior to the Hometown Heroes Survivor Benefits Act, in almost every incidence of death by heart attack or stroke it had been ruled that the heart attack or stroke was not a direct result of an injury sustained in the line of duty and the families received no benefits even though the deaths were clearly triggered by the rigors of the job. The Hometown Heroes Survivor Benefit Act was intended to correct that deficiency in the law, by ensuring that a public safety officer who suffers a fatal heart attack or stroke while on duty or not later than 24 hours after participating in a physical training exercise or responding to an emergency situation, is presumed to have died in the line of duty for purposes of public safety officer survivor benefits.

² Federal, state, and local public rescue squads and ambulance crews are covered for line-of-duty deaths occurring on or after October 15, 1986.

6. Policy Options

Option 1: Include Law Enforcement Officers in the presumption for infectious diseases.

This option would include Law Enforcement Officers in LEOFF Plan 2 under the same presumption for infectious disease that currently covers Fire Fighters including Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome, all Strains of Hepatitis, Meningococcal Meningitis, and Mycobacterium Tuberculosis. This option would provide coverage for the exposure of law enforcement officers, because of their employment, to uncontrolled environments containing various hazardous such as infectious diseases. This option would put Washington on level with a number of states that have presumptions to establish that various infectious diseases are work-related for law enforcement officers under disability or workers' compensation laws. This option is not mutually exclusive from the other options; rather it could be selected in addition to Option 2 and/or Option 3

Option 2: Create a presumption for heart problems for law enforcement officers.

This option would create a presumption for heart problems similar to the presumption established for Fire Fighters during the 2007 Legislative Session. A presumption would exist if a law enforcement officer covered by LEOFF Plan 2 experienced heart problems within 24 hours of strenuous physical exertion due to law enforcement activities. This option would require "law enforcement activities" to be specifically defined. This could include criteria such as participating in a physical training exercise, responding to an emergency situation, or other assigned duties related to or requiring a law enforcement response. This option would put Washington on level with the Federal Government and 20 other states that have presumptions to establish that heart problems are work-related for law enforcement officers under disability or workers' compensation laws. This option is not mutually exclusive from the other options; rather it could be selected in addition to Option 1 and/or Option 3

Option 3: Create a presumption for cancer.

This option would create a presumption for cancer. This option would require the identification of the specific types of cancers to be covered. This option would put Washington on level with five other states that have a cancer presumption for law enforcement officers. This option is not mutually exclusive from the other options; rather it could be selected in addition to Option 1 and/or Option 2.

7. Supporting Information

- **Appendix A: PSOB Statute – Presumption for Heart Attack and Stroke**

Appendix A: PSOB Statute – Presumption for Heart Attack and Stroke

42 U.S.C. § 3796, Sec. 1201(k) Payment of death benefits

(k) For purposes of this section, if a public safety officer dies as the direct and proximate result of a heart attack or stroke, that officer shall be presumed to have died as the direct and proximate result of a personal injury sustained in the line of duty, if—

- (1) that officer, while on duty—
 - (A) engaged in a situation, and such engagement involved nonroutine stressful or strenuous physical law enforcement, fire suppression, rescue, hazardous material response, emergency medical services, prison security, disaster relief, or other emergency response activity; or
 - (B) participated in a training exercise, and such participation involved nonroutine stressful or strenuous physical activity;
- (2) that officer died as a result of a heart attack or stroke suffered—
 - (A) while engaging or participating as described under paragraph (1);
 - (B) while still on that duty after so engaging or participating; or
 - (C) not later than 24 hours after so engaging or participating; and
- (3) such presumption is not overcome by competent medical evidence to the contrary.

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.

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
 - (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.

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.