



Presumptive Medical Conditions for Female Fire Fighters

Initial Consideration

**WASHINGTON STATE
Law Enforcement Officers' and Fire Fighters'
Plan 2 Retirement Board**

May 25, 2005

Presumptive Coverage Research

- Fire fighter occupational health extensively studied, many unresolved issues
 - Dr. TL Guidotti, 2003
- Three major studies since 1995
 - Study cohorts exclusively male
 - Too few females in study population

Presumptive Coverage Research

- National Institute for Occupational Safety and Health (NIOSH)
 - Three studies in progress
 - Studying relationship of carcinogens and breast cancer.
- Reproductive systems an “important part” of National Occupational Research Agenda

Presumption Coverage in Washington

- Presumption that certain diseases are occupationally related
- Occupational Disease includes
 - Respiratory Disease (1987)
 - Heart Problems after exposure (2002)
 - Certain Cancers (2002)
 - Certain Infectious Diseases (2002)

Presumptive Coverage in Washington

- 2002 presumptive bill as introduced covered broad range of cancers.
- Originally included breast and reproductive system cancer.
- Bill amended listing only specific types of cancer

Coverage in Other Jurisdictions

- At least 38 states have heart and lung presumption
- At least 20 states have cancer presumption
- At least 2 states include breast and reproductive system cancer

Coverage in Other Jurisdictions

- Definition of occupational cancer in some states may allow for inclusion of breast and reproductive cancer.
 - Exposure to heat, radiation, or carcinogens.
 - Cancer caused by known or suspected carcinogen as determined by International Agency for Research on Cancer.

Coverage in Other Jurisdictions

- Since 1999, seven states have failed to pass cancer presumption legislation.
- Three of seven failed bills included coverage for breast cancer.
- One of seven failed bills included coverage for reproductive system cancer.

Questions?

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

Presumptive Medical Conditions for Female Fire Fighters Initial Consideration

May 25, 2005

1. Issue

A Board Member asked at the April 27, 2005 board meeting if there was any available research regarding presumptive medical conditions for female fire fighters.

2. Staff

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3. Members Impacted

This impacts all of the female fire fighters in LEOFF Plan 2. As of September 30, 2003 there were approximately 330 active female fire fighters in LEOFF Plan 2, which was 5% of the fire fighter population in the plan.

4. Current Situation

The presumptive coverage statute in Washington state qualifies seven different types of cancer as presumptive occupational disease for fire fighters for the purpose of qualifying for workers' compensation. The seven types of cancer listed do not include breast cancer or reproductive system cancer.

5. Background Information

Research on Presumptive Coverage for Female Fire Fighters

In a 2003 report¹ to the British Columbia Professional Fire Fighters Association, Dr. Tee Guidotti stated that “The occupational health problems of fire fighters have been extensively studied, to the point that the world epidemiological literature on this topic is among the most complete and detailed available for any occupation. Despite this detail, intense interest and relative completeness, there are many unresolved issues.” One of these areas of “unresolved issues” appears to be occupational health problems of female fire fighters.

Since 1995 there have been three major studies (Burnett (1994); Bates (2001); Baris (2001)), that have been made available which contributed to the world literature on fire fighters in the occupational health arena. All three of these studies had cohorts consisting exclusively of males. Several other minor studies that were reviewed included females in the population sample. However, the females were excluded from the study results because the number of females in the cohort was statistically insignificant.

The National Institute for Occupational Safety and Health (NIOSH), a part of the Centers for Disease Control and Prevention, is the federal agency responsible for conducting research and making recommendations for the prevention of work-related illness and injury. While breast cancer research has increased in the past decade, few studies have addressed the relationship between the workplace and the prevalence of cancer. NIOSH is currently working on three major breast cancer studies to determine if women exposed to potential breast carcinogens are at increased risk of breast cancer. Along with breast cancer, Reproductive issues are listed as “an important part” of the *National Occupational Research Agenda* that is being coordinated by NIOSH.

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 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; cancer; 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. Currently, the presumption of cancer also only applies to the following specific types of cancer:

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

The 2002 bill originally listed a broader set of cancers within the presumption than was passed in the final version of the bill. The Senate Ways & Means Committee amended the cancers included within the presumption from the original list (below) to the list that exists today (above). 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

The presumption of infectious disease as an occupational disease only applies to Fire Fighters who have contracted the following:

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

A restriction to presumptive occupational disease exists which provides that occupational disease does not apply 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. In addition to tobacco use, the presumption of occupational disease may also be rebutted by a preponderance of evidence challenging the presumption including physical fitness and weight, lifestyle, hereditary factors, and exposure from other employment or non-employment activities.

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.

Presumptive Coverage Provisions in Other Jurisdictions

According to reports from the International Association of Fire Fighters, at least 38 states have heart and lung presumption laws for fire fighters, while at least 20 states have recognized cancer presumption as directly related to fire fighting activities.

At least two of the twenty states have presumptions specifically for breast cancer and female reproductive system cancers. Those two states are Virginia and New York. The Virginia law specifies ovarian and breast cancer as presumed occupational diseases. New York specifies breast cancer and reproductive system cancer as occupational diseases.

The definition of occupational cancer in some states may allow for the inclusion of breast or reproductive system cancers. In some states the definition of cancer is linked to exposure of heat, radiation, or carcinogens. Several other States define cancer as a type that may be caused by a known or suspected carcinogen as determined by the International Agency for Research on Cancer. Further examination of these standards would be required to determine if the causes are linked directly breast or reproductive system cancers. A summary of state laws/pending legislation in twelve states providing a presumption of cancer as an occupational disease for fire fighters is provided in Appendix A.

Since 1999, at least seven states have failed attempts to pass legislation providing an occupational disease presumption for fire fighters or amending current provisions. Three of the seven states would have provided coverage for coverage for breast cancer; And one of the three would have provided coverage for reproductive system cancer. The three states were Iowa (2002 – HB2238), Utah (2002 – HB174), and Florida (2005 – SB1680).

6. Supporting Information

- *Appendix A: Cancer Presumption in State Statutes*

Appendix A: Cancer Presumption in State Statues

Arizona – Revised Statute 29-901.01

...any disease, infirmity or impairment of a firefighter's or peace officer's health that is caused by brain, bladder, rectal or colon cancer, lymphoma, leukemia or aden carcinoma or mesothelioma of the respiratory tract and that results in disability or death is presumed to be an occupational...and is deemed to arise out of employment. The presumption is granted if all of the following apply:

- 1. The firefighter or peace officer passed a physical examination before employment and the examination did not indicate evidence of cancer.*
- 2. The firefighter or peace officer was assigned to hazardous duty for at least five years.*
- 3. The firefighter or peace officer was exposed to a known carcinogen as defined by the international agency for research on cancer and informed the department of this exposure, and the carcinogen is reasonably related to the cancer.*

California - Labor Code 3212.1

This section applies to active firefighting members... The cancer so developing or manifesting itself in these cases shall be presumed to arise out of and in the course of the employment...includes cancer, including leukemia, that develops or manifests itself during a period in which any member ... is in the service of the department or unit, if the member demonstrates that he or she was exposed, while in the service of the department or unit, to a known carcinogen as defined by the International Agency for Research on Cancer, or as defined by the director.

Maryland – Annotated Code, Labor & Employment, Section 9-503

A paid firefighter, paid fire fighting instructor, or a sworn member of the Office of the State Fire Marshal employed by an airport authority, a county, a fire control district, a municipality, or the State or a volunteer firefighter, volunteer fire fighting instructor, volunteer rescue squad member, or volunteer advanced life support unit member...is presumed to be suffering from an occupational disease that was suffered in the line of duty...if the individual has leukemia or pancreatic, prostate, rectal, or throat cancer that is caused by contact with a toxic substance that the individual has encountered in the line of duty;

Minnesota – Statute 176.011, Subd 15

A firefighter on active duty with an organized fire department who is unable to perform duties in the department by reason of a disabling cancer of a type caused by exposure to heat, radiation, or a known or suspected carcinogen, as defined by the International Agency for Research on Cancer, and the carcinogen is reasonably linked to the disabling cancer, is presumed to have an occupational disease.

Nevada – Revised Statute 617.453

Notwithstanding any other provision of this chapter, cancer, resulting in either temporary or permanent disability, or death, is an occupational disease and compensable as such under the provisions of this chapter if... He was exposed, while in the course of the employment, to a known carcinogen as defined by the International Agency for Research on Cancer or the National Toxicology Program; and...The carcinogen is reasonably associated with the disabling cancer. The following substances shall be deemed... to be known carcinogens that are reasonably associated with the following disabling cancers:

- Diesel exhaust, formaldehyde and polycyclic aromatic hydrocarbon shall be deemed to be known carcinogens that are reasonably associated with bladder cancer.*
- Acrylonitrile, formaldehyde and vinyl chloride shall be deemed to be known carcinogens that are reasonably associated with brain cancer.*
- Diesel exhaust and formaldehyde shall be deemed to be known carcinogens that are reasonably associated with colon cancer.*
- Formaldehyde shall be deemed to be a known carcinogen that is reasonably associated with Hodgkin's lymphoma.*
- Formaldehyde and polycyclic aromatic hydrocarbon shall be deemed to be known carcinogens that are reasonably associated with kidney cancer.*
- Chloroform, soot and vinyl chloride shall be deemed to be known carcinogens that are reasonably associated with liver cancer.*
- Acrylonitrile, benzene, formaldehyde, polycyclic aromatic hydrocarbon, soot and vinyl chloride shall be deemed to be known carcinogens that are reasonably associated with lymphatic or haemotopoietic cancer.*

The provisions...do not create an exclusive list and do not preclude any person from demonstrating, on a case-by-case basis for...that a substance is a known carcinogen that is reasonably associated with a disabling cancer.

New Hampshire – RSA 281-A:17

...there shall exist a prima facie presumption that cancer disease in a firefighter, whether a regular, call, volunteer, or retired member of a fire department, is occupationally related. In order to receive this occupational cancer disability benefit, the type of cancer involved must be a type which may be caused by exposure to heat, radiation, or a known or suspected carcinogen as defined by the International Agency for Research on Cancer.

New York – Consolidated Laws, Retirement and Social Security, Article 8 § 363

*...any (i) melanoma or (ii) condition of cancer affecting the lymphatic, digestive, hematological, urinary, neurological, **breast**, **reproductive**, or prostate systems, resulting in total or partial disability or death to a paid firefighter, who successfully passed a physical examination on entry into firefighter service, which examination failed to reveal any evidence of such melanoma or condition, shall be presumptive evidence that, unless the contrary be proven by competent evidence, such disability or death (a) was caused by the natural and proximate result of an accident, not caused by such fire fighter`s own willful negligence, and (b) was sustained in the performance and discharge of duty.*

North Dakota - Century Code 65-01-15.1

Any condition or impairment of health of a full-time paid firefighter or law enforcement officer caused by lung or respiratory disease, hypertension, heart disease, or exposure to infectious disease as defined ..., or occupational cancer in a full-time paid firefighter, resulting in total or partial disability or death is presumed to have been suffered in the line of duty.

As used in this section, an occupational cancer is one which arises out of employment as a full-time paid firefighter and is due to injury due to exposure to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty as a full-time paid firefighter.

Oklahoma – State Statute Section 11-49-110

Any member of the fire department of any municipality who is disabled as a result of heart disease, injury to the respiratory system, infectious disease, or the existence of any cancer which heart disease, injury to the respiratory system, infectious disease, or cancer was not revealed by the physical examination passed by the member upon entry into the department, shall be presumed to have incurred the heart disease, injury to the respiratory system, infectious disease, or cancer while performing the firefighter's duties as a member of such department unless the contrary is shown by competent evidence.

Texas – 2005 Legislation Pending, SB 310

A firefighter or emergency medical technician who suffers from cancer resulting in death or total or partial disability is presumed to have developed the cancer during the course and scope of employment as a firefighter or emergency medical technician if (1) the firefighter or emergency medical technician regularly responded on the scene to calls involving fires or fire fighting; or regularly responded to an event involving the documented release of radiation or a known or suspected carcinogen while the person was employed as a firefighter or emergency medical technician; and (2) the cancer is known to be associated with fire fighting or exposure to heat, smoke, radiation, or a known or suspected carcinogen... applies only to a type of cancer that may be caused by exposure to heat, smoke, radiation, or a known or suspected carcinogen as determined by the International Agency for Research on Cancer.

Virginia – State Code 65.2-402

Leukemia or pancreatic, prostate, rectal, throat, ovarian or breast cancer causing the death of, or any health condition or impairment resulting in total or partial disability of, any volunteer or salaried firefighter... having completed twelve years of continuous service who has a contact with a toxic substance encountered in the line of duty shall be presumed to be an occupational disease, suffered in the line of ...unless such presumption is overcome by a preponderance of competent evidence to the contrary. For the purposes of this section, a "toxic substance" is one which is a known or suspected carcinogen, as defined by the International Agency for Research on Cancer, and which causes, or is suspected to cause, leukemia or pancreatic, prostate, rectal, throat, ovarian or breast cancer.

Washington – RCW 51.32.188

...there shall exist a prima facie presumption that: (a) Respiratory disease; (b) heart problems that are experienced within seventy-two hours of exposure to smoke, fumes, or toxic substances; (c) cancer; and (d) infectious diseases are occupational diseases This presumption of occupational disease may be rebutted by a preponderance of the evidence. The presumption within ... shall only apply to primary brain cancer, malignant melanoma, leukemia, non-Hodgkin's lymphoma, bladder cancer, ureter cancer, and kidney cancer.

¹ Guidotti TL, Evaluating the Association Between Selected Cancers and Occupation as a Fire fighter, 2003.