



INITIAL CONSIDERATION

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ISSUE STATEMENT

For law enforcement officers, there are currently no presumptive medical conditions covered for occupational diseases or disabilities. For fire fighters, certain cancers not currently covered by the occupational disease presumption should be covered.

OVERVIEW

Under the state's Industrial Insurance Act (Act), a worker who, in the course of employment, is injured or suffers disability from an occupational disease is entitled to certain benefits. To prove an occupational disease, the worker must show that the disease arose "naturally and proximately" out of employment.

For fire fighters who are members of LEOFF 2, there is a presumption that certain medical conditions are occupational diseases. Those conditions are: respiratory disease; heart problems; specified cancers; and infectious diseases. With respect to heart problems, the problems must be experienced within 72 hours of exposure to smoke, fumes, or toxic substances; or experienced within 24 hours of strenuous physical exertion due to firefighting activities.

The following cancers are currently not covered under the presumption for fire fighters in LEOFF 2:

- Mesothelioma
- Adenocarcinoma
- Stomach cancer
- Esophageal cancer
- Buccal cancer
- Pharynx cancer
- Nonmelanoma skin cancer
- Breast cancer

In addition, methicillin-resistant staphylococcus aureus (MRSA) is not listed under infectious diseases, and stroke is included under the same limitations as heart problems (problems must be experienced within 72 hours).

Law enforcement officers are not protected by a presumption for occupational illness/injury in Washington State. While the occupational illness/ injury provisions in the Workers' Compensation statutes do apply to law enforcement officers, the burden of proof to qualify for these benefits falls on the member. Federal law contains a presumption for heart attack and stroke under the Public Safety Officers' Benefit (PSOB) program which applies to law enforcement officers in Washington State.

BACKGROUND & POLICY ISSUES

Recent studies, most notably one released in 2016 by the Center for Disease Control¹ (CDC), had some startling findings. The CDC found that the number of fire fighters stricken with cancer is rising, and that fire fighters are more likely than the general public to become afflicted with various cancers as a direct result of workplace exposure suffered while combating fires. The study also found that in comparison to the general public, twice as many fire fighters were diagnosed with malignant mesothelioma, a rare type of cancer caused by exposure to asbestos. Mesothelioma is currently not covered under presumption in LEOFF 2.

The CDC also found more cases of certain cancers among younger fire fighters; fire fighters under 65 years of age had more bladder and prostate cancers than expected. When comparing fire fighters to each other, the chance of lung cancer diagnosis or death increased with the amount of time spent at fires, and the chance of leukemia death increased with the number of fire runs.

Fire Fighter 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

¹ <http://www.cdc.gov/niosh/pgms/worknotify/pdfs/ff-cancer-factsheet-final.pdf>

volunteer fire fighter does not count towards the 10 years of service required for presumptive cancer coverage.²

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 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 (BIIA), or to any court and the final decision allows the claim for benefits, the BIIA or the court must order that all reasonable costs of the appeal be paid to the fire fighter or his or her beneficiary.

Law Enforcement Officers Presumption

During the 1991 Washington State Legislative Session, Senate Floor Resolution 8674 requested the Department of Labor and Industries to conduct a study of the unique occupational

² 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, and Oral System Cancer.

illness/injury hazards encountered by law enforcement officers and fire fighters. The Department of Labor and Industries was specifically asked to address the incidence of cancer and heart disease and the problems of proof associated with occupation illnesses/injuries. The study, conducted with the assistance of the Department of Health and the University of Washington, was completed December 1, 1992. An advisory committee was also established with representatives from stakeholder organizations.

With respect to law enforcement officers and cancer, the study reported that based on the available epidemiologic evidence that the overall risk of cancer among law enforcement officers was similar to that of the general population. The study reported with respect to law enforcement officers and circulatory disease, that while the stresses associated with law enforcement officers are thought to increase the risk of ischemic heart disease, most epidemiologic studies found law enforcement officers to have a risk of death due to circulatory disease similar to, or only slightly above, that of the general population. Despite the available evidence suggesting increased risk of heart disease, there was not enough evidence from which to draw firm conclusions. The study reported that very few studies of this specific nature about law enforcement officers had been performed and current studies were limited to available death records which lack many specific details.

Infectious diseases for law enforcement officers, which were not included in the 1992 study, have been more readily covered in recent research. Findings suggest that law enforcement officers have significantly elevated statistical rates for a number of diseases, but despite these statistical findings, they do not necessarily prove causal association.

Fortunately, a new study paid for by the Center for Disease Control seeks to find out how the rigors of police work — from traumatic sights and sounds, to long work shifts and high demand levels — affects officers. The research will assess police stress over a period of 12 years by examining measures of stress and the association of these measures with cardiovascular and metabolic diseases. Its findings will be used to provide translational information to improve prevention practices. This study will be among the first of its kind to look at the long-term effects of stress on police health.

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.

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 15, 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."

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.

States with Presumptive Laws

Currently 37 different states have some sort of presumptive disease and disability law for fire fighters, while only 28 states have presumptions for law enforcement officers.

In the 28 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). Fifteen 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 (5), meningococcal meningitis (3), and other or generally defined (6).



Presumptive Medical

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September 21, 2016

ISSUE



- ▶ **For law enforcement officers, there are currently no presumptive medical conditions covered for occupational diseases or disabilities.**
- ▶ **For fire fighters, certain cancers not currently covered by the occupational disease presumption should be covered.**

OVERVIEW



- ▶ **What is a presumption?**
- ▶ **What presumptive diseases and disabilities are currently covered for FF?**
- ▶ **What diseases are not covered for FF?**
- ▶ **Law enforcement officer presumption?**

BACKGROUND



- ▶ **Number of fire fighters stricken with cancer is rising**
- ▶ **Fire fighters are more likely than the general public to become afflicted with various cancers**
- ▶ **Twice as many fire fighters were diagnosed with malignant mesothelioma**
 - Rare type of cancer caused by exposure to asbestos
 - Currently not covered under FF presumption

FF PRESUMPTION HISTORY



▶ 1987

- Respiratory disease added

▶ 2002

- Heart problems added
- Certain cancers added
- Infectious diseases added
- 10 years of service requirement

FF PRESUMPTION HISTORY CONT.



▶ 2007

- More heart problems added
- More cancers added
- Recovery of litigation costs and fees added

LEO PRESUMPTION HISTORY



▶ 1991

- Legislature resolution to look into occupational illnesses/injuries for LEO's and FF's
 - FF cancers above national average, LEO cancers similar to national average
 - Limited information available on LEO cancer risks

▶ 1992

- Infectious diseases higher for LEO's
 - Causal association tough to prove

LEO PRESUMPTION HISTORY CONT.

▶ New CDC study

- 2019 projected completion date
- Assess police stress over 12 year period
- Examine stress and association with heart and lung disease
- Study will be among first of its kind

FEDERAL BENEFITS



▶ **Public Safety Officers Benefits Act (PSOB)**

- Line of duty death benefit for FF's and LEO's

▶ **Hometown Heroes Survivor Benefits Act**

- Expanded PSOB to cover heart attacks and strokes in line of duty for FF's and LEO's
- This act changed how presumptive diseases were treated at the federal level monumentally

PRESUMPTIVE LAWS NATIONALLY



▶ Fire Fighters

- 37 different states

▶ Law Enforcement Officers

- 28 different states
 - 20 have heart attack or cardiovascular disease
 - 11 have respiratory or lung disease
 - 6 have hypertension
 - 5 have cancer
 - 3 have stroke

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