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Public Safety Officers' Benefits (PSOB) Program: In Brief

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Summary

The Public Safety Officers' Benefits (PSOB) program provides three different types of benefits to public safety officers and their survivors: death, disability, and education benefits. The PSOB program is administered by the Department of Justice, Bureau of Justice Assistance's (BJA's), PSOB Office.

The PSOB death benefit is a mandatory program, and the disability and education benefits are discretionary programs. As such, Congress appropriates "such sums as are necessary" each fiscal year to fund the PSOB death benefit program while appropriating separate amounts for both the disability and education benefits programs.

The PSOB program provides a one-time lump sum *death* benefit to eligible survivors of public safety officers whose deaths are the direct and proximate result of a traumatic injury sustained in the line of duty or from certain line-of-duty heart attacks, strokes, and vascular ruptures.

The PSOB program provides a one-time lump sum *disability* benefit to public safety officers who have been permanently and totally disabled by a catastrophic injury sustained in the line of duty, if the injury permanently prevents the officer from performing *any* gainful work.

The PSOB program also provides assistance for higher education expenses (e.g., tuition and fees, books, supplies, and room and board) to spouses and children of public safety officers who have been killed or disabled in the line of duty. Educational assistance is available to the spouse and children of a public safety officer after the PSOB death or disability claim has been approved and awarded.

Claimants have the opportunity to appeal denied claims. If the PSOB Office denies a claim, the claimant can request that a hearing officer review the claim. If the hearing officer denies the claim, the claimant can request that the Director of BJA review the claim. Claimants may file supporting evidence or legal arguments along with their request for a review by a hearing officer or the Director. If the claim is denied by the Director, claimants can appeal the denial in the United States Court of Federal Claims pursuant to 28 U.S.C. §1491(a).

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The Public Safety Officers' Benefits (PSOB) program was authorized by P.L. 94-430, the Public Safety Officers' Benefits Act of 1976 (codified at 42 U.S.C. §3796 et seq., hereinafter referred to as "the PSOB Act"). The PSOB program was "... designed to offer peace of mind to men and women seeking careers in public safety and to make a strong statement about the value that America places on the contributions of those who serve their communities in potentially dangerous circumstances."¹ The program was created by Congress out of a concern that "... the hazards inherent in law enforcement and fire suppression and the low level of state and local death benefits might discourage qualified individuals from seeking careers in public safety, thus hindering the ability of communities to protect themselves."²

The PSOB program is administered by the Department of Justice, Bureau of Justice Assistance's (BJA's), PSOB Office. The PSOB Office is responsible for reviewing, processing, and making determinations about claims for benefits under the PSOB program.³

The PSOB program originally provided only death benefits to survivors of public safety officers killed in the line of duty. Since its inception in 1976, the PSOB program has been expanded to provide disability benefits to public safety officers disabled by an injury suffered in the line of duty and education benefits to the spouses and children of public safety officers killed or disabled in the line of duty. Each of these benefits is discussed in more detail below.

The PSOB death benefit is a mandatory program, and the disability and education benefits are discretionary programs. As such, Congress appropriates "such sums as are necessary" each fiscal year to fund the PSOB death benefit program while appropriating separate amounts for both the disability and education benefits programs.

Definition of a Public Safety Officer

Only individuals who are public safety officers, or their eligible survivors, are eligible to receive PSOB benefits. For the purposes of the PSOB Act, a "public safety officer" is defined as⁴

- an individual serving a public agency⁵ in an official capacity, with or without compensation, as a law enforcement officer,⁶ firefighter,⁷ or a chaplain;⁸

¹ Testimony of BJA Director Domingo S. Herraiz, U.S. Congress, Senate Committee on the Judiciary, *Justice Denied? Implementation of the Hometown Heroes Survivors Benefits Act*, hearing, 110th Cong., 1st sess., October 4, 2007, at http://judiciary.senate.gov/hearings/testimony.cfm?id=2972&wit_id=6703 (hereinafter "Testimony of D.S. Herraiz").

² Ibid.

³ Department of Justice, Office of Justice Programs, "Public Safety Officers' Benefits Program," 71 *Federal Register* 46029, August 10, 2006 (hereinafter "PSOB: *Federal Register*").

⁴ 42 U.S.C. §3796b(9).

⁵ A "public agency" is defined as the United States, any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States, or any unit of local government, department, agency, or instrumentality of any of the foregoing. 42 U.S.C. §3796b(8).

⁶ A "law enforcement officer" is defined as an individual who is 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. 42 U.S.C. §3796b(6).

⁷ A "firefighter" is defined as an individual serving as an officially recognized or designated member of a legally organized professional or volunteer fire department. 42 U.S.C. §3796b(4).

⁸ A "chaplain" is defined as any individual serving as an officially recognized or designated member of a legally organized volunteer fire department or legally organized police department, or an officially recognized or designated (continued...)

- an employee of the Federal Emergency Management Agency (FEMA) who is performing official duties, if those official duties are related to a major disaster or emergency that has been or is later declared to exist with respect to the area under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) and are determined by the Administrator of FEMA to be hazardous duties;
- an employee of a state, local, or tribal emergency management or civil defense agency who is performing official duties in cooperation with FEMA, if those official duties are related to a major disaster or emergency that has been or is later declared to exist with respect to the area under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and are determined by the head of the agency to be hazardous duties; or
- a member of a rescue squad or ambulance crew⁹ who, as authorized or licensed by law and by the applicable agency or entity, is engaging in rescue activities or providing emergency medical services.

PSOB Death Benefit

The PSOB program provides a death benefit to eligible survivors of a public safety officer whose death is the direct and proximate result of a traumatic injury sustained in the line of duty or certain work-related heart attacks or strokes.¹⁰ To receive a death benefit, the claimant must produce sufficient evidence to show that the public safety officer died as the direct and proximate result of an injury sustained in the line of duty.¹¹ Under the program, it is presumed that a public safety officer who dies from a heart attack, stroke, or vascular rupture while engaged in, on duty after, or within 24 hours of participating in a non-routine 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 a training exercise involving non-routine stressful or strenuous physical activity, has died in the line of duty for death benefit purposes. However, the statutory presumption can be overcome with competent medical evidence to the contrary.¹²

The PSOB program pays a one-time lump sum death benefit to eligible survivors of a public safety officer killed in the line of duty. The amount paid to the officer's survivors is the amount

(...continued)

public employee of a legally organized fire or police department who was responding to a fire, rescue, or police emergency. 42 U.S.C. §3796b(2).

⁹ A "member of a rescue squad or ambulance crew" is an officially recognized or designated employee or volunteer member of a rescue squad or ambulance crew (including a ground or air ambulance service) that is (1) a public agency; or (2) a nonprofit entity serving the public that is officially authorized or licensed to engage in rescue activity or to provide emergency medical services; and engages in rescue activities or provides emergency medical services as part of an official emergency response system. 42 U.S.C. §3796b(7).

¹⁰ Hope D. Janke, *Public Safety Officers' Benefits (PSOB) Program*, BJA Fact Sheet, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, April 2011, https://www.bja.gov/Publications/PSOB_FS.pdf (hereinafter "PSOB fact sheet").

¹¹ PSOB: *Federal Register*, p. 46028.

¹² "Competent medical evidence to the contrary" is defined as when evidence indicates to a degree of medical probability that circumstances other than any engagement or participation described at 42 U.S.C. 3796(k)(1), considered in combination (as one circumstance) or alone, were a substantial factor in bringing about the heart attack or stroke. 28 C.F.R. §32.13.

authorized to be paid on the date that the officer died, not the amount authorized to be paid on the date that the claim is approved.¹³ The current death benefit is \$343,589.

Survivors of *state* and *local* law enforcement officers and firefighters may receive a death benefit if the officer or firefighter died on or after September 29, 1976. Survivors of *federal* law enforcement officers and firefighters may receive a death benefit if the officer or firefighter died on or after October 12, 1984. A death benefit may be awarded to survivors of members of federal, state, and local public rescue squads or ambulance crews who died on or after October 15, 1986. A death benefit may be awarded to survivors of FEMA personnel and state, local, and tribal emergency management and civil defense agency employees working in cooperation with FEMA who died on or after October 30, 2000. Survivors of chaplains who serve a police or fire department in an official capacity who died on or after September 11, 2001, are eligible to receive a death benefit under the PSOB program. Finally, the survivors of an officer who died of a heart attack, stroke, or vascular rupture on or after December 15, 2003, are eligible to receive a death benefit.

PSOB death benefits are paid to eligible survivors in the following order:

- If the officer is survived by only a spouse and no children, 100% of the death benefit goes to the spouse.
- If the officer is survived by a spouse and children, 50% of the death benefit goes to the spouse and the remaining 50% is distributed equally among the officer's children.¹⁴
- If the officer is survived by only children and not a spouse, the death benefit is equally distributed among the officer's children.
- If the officer is survived by neither a spouse nor children, the death benefit is paid to the individual(s) designated by the officer in the most recently executed designation of beneficiary on file at the time of the officer's death. If the officer does not have a designation of beneficiary on file, the benefit is paid to the individual(s) designated by the officer in the most recently executed life insurance policy on file at the time of the officer's death.
- If the officer is survived by neither a spouse nor eligible children, and the officer does not have a life insurance policy, the death benefit is equally distributed between the officer's surviving parents.
- If the officer is survived by neither a spouse, nor eligible children, nor parents, and the officer did not have a designation of beneficiary or a life insurance policy on file at the time of his or her death, the benefit is paid to surviving adult, non-dependent, children of the officer.¹⁵

¹³ 42 U.S.C. §3796(i).

¹⁴ An "eligible child" is defined as any "natural, illegitimate, adopted, or posthumous child or stepchild" of the public safety officer who, at the time of the public safety officer's fatal or catastrophic injury, is (1) 18 years of age or under; (2) over 18 years of age and a student as defined in Section 5 U.S.C. §8101; or (3) over 18 years of age and incapable of self-support because of physical or mental disability. 42 U.S.C. §3796b(3).

¹⁵ 18 U.S.C. §3796(a).

PSOB Disability Benefit

Title XIII of P.L. 101-647 expanded the scope of the PSOB program to provide a disability benefit to public safety officers who have been permanently and totally disabled as the direct and proximate result of a catastrophic injury¹⁶ sustained in the line of duty, if the injury permanently prevents the officer from performing *any* gainful work.¹⁷ The claimant is responsible for producing sufficient evidence to prove that he or she suffered a permanent and total disability as the direct and proximate result of a catastrophic injury sustained in the line of duty.¹⁸ Like the PSOB death benefit program, the disability benefit program pays a one-time lump sum disability benefit to public safety officers disabled in the line of duty. The current disability benefit is \$343,589.

Most public safety officers (federal, state, and local law enforcement officers; firefighters; and members of public rescue squads and ambulance crews) are eligible to receive disability benefits if they were disabled by an injury suffered in the line of duty on or after November 29, 1990. As of October 30, 2000, employees of FEMA and state, local, and tribal emergency management and civil defense agency employees working in cooperation with FEMA are also eligible to receive disability benefits. Chaplains who serve a police or fire department in an official capacity who are disabled on or after September 11, 2001, are also eligible to receive disability benefits under the PSOB program.

Limitations on Death and Disability Benefits

A death or disability benefit will not be paid

- if the fatal or catastrophic injury was caused by the intentional misconduct of the public safety officer or the officer's intention to bring about his or her death, disability, or injury;
- if the public safety officer was voluntarily intoxicated at the time of his or her fatal or catastrophic injury;
- if the public safety officer was performing his or her duties in a grossly negligent manner at the time of his or her fatal or catastrophic injury;
- if an eligible survivor's actions were a substantial contributing factor to the officer's fatal or catastrophic injury; or
- with respect to any individual employed in a capacity other than a civilian capacity.¹⁹

Public Safety Officers' Educational Assistance

The Federal Law Enforcement Dependents Assistance Act of 1996 (P.L. 104-238) authorized the Public Safety Officers' Educational Assistance (PSOEA) program. PSOEA provides assistance to spouses and children of public safety officers killed or disabled in the line of duty who attend a

¹⁶ "Catastrophic injury" is defined as an injury that permanently prevents an individual from performing any gainful work. 42 U.S.C. §3796b(1).

¹⁷ PSOB fact sheet.

¹⁸ PSOB: *Federal Register*, p. 46028.

¹⁹ 42 U.S.C. §3796a.

program of education²⁰ at an eligible educational institution.²¹ PSOEA funds may be used to defray expenses associated with attending college, including tuition, room and board, books, supplies, and education-related fees.²²

The spouse of a deceased or disabled public safety officer is eligible to receive education benefits under PSOEA anytime during his or her lifetime. However, the child of a deceased or disabled public safety officer is no longer eligible for assistance after his or her 27th birthday.²³ A spouse or child of a deceased or disabled public safety officer cannot receive PSOEA funds for more than 45 months of full-time education or a proportionate period of part-time education.²⁴ Currently, the amount of the PSOB educational benefit is \$1,024 per month of full-time college attendance.

Under the PSOEA program, the families of federal, state, and local police, fire, and emergency public safety officers are covered for line-of-duty *deaths* that occurred on or after January 1, 1978. Families of disabled federal law enforcement officers are eligible for benefits if the officer was *disabled* on or after October 3, 1996, whereas families of disabled state and local police, fire, and emergency public safety officers are eligible for benefits if the officer was *disabled* on or after November 13, 1998. Families of FEMA personnel and state, local, and tribal emergency management and civil defense agency employees are covered for such injuries sustained on or after October 30, 2000.

Appeal of Denied Claims

Claimants are allowed to appeal claims that are denied by the PSOB Office. A claimant has 33 days after being served with a notice of denial to request a determination by a hearing officer.²⁵ The claimant may file supporting evidence or legal arguments along with the request for a hearing officer determination.²⁶ The supporting evidence and legal arguments must be filed with both the hearing officer and the PSOB Office. The claim is assigned to a hearing officer, who reviews the claim *de novo*—meaning that the hearing officer reviews the entire claim anew rather

²⁰ A “program of education” is defined as any curriculum or any combination of courses or subjects pursued at an eligible educational institution, which generally is accepted as necessary to fulfill requirements for the attainment of a predetermined and identified educational, professional, or vocational objective. It includes course work for the attainment of more than one objective if, in addition to the previous requirements, all the objectives generally are recognized as reasonably related to a single career field. 42 U.S.C. §3796d-6(2).

²¹ An “eligible educational institution” is defined as an institution described in Section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on October 3, 1996, and eligible to participate in programs under Title IV of the act. 42 U.S.C. §3796d-6(3).

²² U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, *Public Safety Officers' Benefits Program: Educational Assistance Program*, available at https://www.psob.gov/files/PSOB_Education.pdf (hereinafter, “PSOB: Educational Assistance Program”).

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ A “hearing officer” is appointed pursuant to 42 U.S.C. §3787, which reads, “The Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics may appoint such hearing examiners or administrative law judges or request the use of such administrative law judges selected by the Office of Personnel Management pursuant to [5 U.S.C. § 3344], as shall be necessary to carry out their respective powers and duties under this chapter. [BJA], [NIJ], and [BJS] or upon authorization, any member thereof or any hearing examiner or administrative law judge assigned to or employed thereby shall have the power to hold hearings and issue subpoenas, administer oaths, examine witnesses, and receive evidence at any place in the United States they respectively may designate.”

²⁶ 28 C.F.R. §32.42.

than reviewing the finding, determinations, decisions, judgments, rulings, or other actions of the PSOB Office—and makes a determination.²⁷

A claimant appealing the denial of a death or disability benefit can request that the hearing officer hold a hearing.²⁸ A request for a hearing will not be granted if the claimant does not request a hearing within 90 days of the claim being assigned to a hearing officer. The hearing provides the hearing officer with the opportunity to collect evidence from the claimant and any other evidence the hearing officer may decide is necessary or useful.²⁹ At the hearing, the hearing officer may exclude evidence whose probative value is substantially outweighed by undue delay, waste of time, or needless presentation of cumulative evidence.³⁰ Witnesses (other than the claimant and anyone who the claimant has shown to be essential to the presentation of the claim) are prevented from hearing the testimony of other witnesses at the hearing.³¹

If a claim is denied by the hearing officer, the claimant can appeal to the Director of BJA (the Director). If the denied claim is not appealed to the Director, the hearing officer's determination is considered the final agency determination of the claim.³² A claimant has 33 days after being notified by the hearing officer that the claim has been denied to file an appeal with the Director.³³ Like the request for a hearing officer determination, the claimant may file supporting evidence or legal arguments along with the request for an appeal. If the Director denies the claim, the claimant can appeal the denial in the United States Court of Federal Claims pursuant to 28 U.S.C. §1491(a).³⁴ However, to petition the court to review the denial of a claim, the claimant must exhaust the administrative remedies available, meaning that the claimant must have asked for both a hearing officer determination and a Director review. The Director's determination constitutes the final agency determination of the claim.³⁵

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²⁷ 28 C.F.R. §32.43.

²⁸ 28 C.F.R. §32.45.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

³² 28 C.F.R. §32.46.

³³ 28 C.F.R. §32.52.

³⁴ 28 C.F.R. §32.55.

³⁵ *Ibid.*