Changes Adjust PSOB Determination Process

National Volunteer Fire Council

The Department of Justice (DoJ) has issued two policy memorandums to the Public Safety Officers' Benefits Program (PSOB) that will significantly change the determination process for PSOB applications made under the Hometown Heroes Survivor Benefits Act. The new policy, which is effective immediately, clarifies the language of the regulations and is intended to fix the problems that have been plaguing the determination process.

Under the new policy, no activity shall be understood to be "performed as a matter of routine" solely based on the public safety agency describing it as "routine" or "ordinary." The determination of whether an activity is "routine" will be informed less by how often it is performed than by its stressful or strenuous character. Responding to an emergency call shall presumptively be treated as non-routine.

DoJ has also changed its policy for determining whether there is "competent medical evidence to the contrary." No medical history records will be requested of claimants in cases where nothing in the claim file suggests that either something other than the line of duty may have caused the fatal heart attack or stroke or that it was more likely than not that the heart attack was imminent. The mere presence of cardiovascular disease or risk factors, however extreme, that is found, for example, through an autopsy or mentioned in a coroner's report or death certificate, shall not be considered in the determination unless information in the claim file itself suggests that the deceased person knew or should have known of such presence and appears to have worsened or aggravated the same by his or her own intentional and reckless behavior. Any medical history records requested of the claimant will be reviewed for mitigating evidence in favor of the claim.

"I am very pleased that it appears that the Department of Justice is starting to get the message," said Philip C. Stittleburg, Chairman of the National Volunteer Fire Council (NVFC). "I strongly encourage anyone whose Hometown Heroes claim has been denied to appeal the decision directly to the Director of the Bureau of Justice Assistance as soon as possible."

PSOB is a one-time payment of nearly $303,064 to the families of fallen public safety officers. The Hometown Heroes Act, which was signed into law in December 2003, was intended to make it possible for public safety officers who die from heart attack or stroke caused by participation in emergency response to qualify for PSOB.

Up until now, DoJ's interpretation of the law has been at odds with the intent of Congress. DoJ has placed the burden of proof that the physical activity the officer engaged in was nonroutine or stressful on the applicant and has denied claims in which firefighters suffered a fatal heart attack during emergency response, with the justification that emergency response does not necessarily constitute "nonroutine stressful or strenuous physical" activity. As of October 4, a total of 202 Hometown Heroes claims are pending, with 21 approved and 57 denied. A total of 26 appeals have been filed.

The NVFC has expressed frustration and concern over delays in processing applications and the low number of awards that have been made, and has worked towards getting the situation rectified. With the new policy in place, DoJ is soliciting appeals and is printing 35,000 packets to guide claimants in filing for the benefit.