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Representing America's Finest

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September 8, 2016

Ms. Hope D. Janke
Bureau of Justice Assistance
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810 7th Street N.W.
Washington, D.C. 20531

RE: OJP Docket No. 1716

On behalf of the National Association of Police Organizations (NAPO), I am submitting comments on the Notice of Proposed Rulemaking for the Public Safety Officers' Benefits (PSOB) Program, OJP Docket No. 1716, as published in the Federal Register, Vol. 81, No. 136, on July 15, 2016.

NAPO supported the James Zadroga 9/11 Health and Compensation Act (Zadroga Act), which was named after a NAPO member and New York City police detective, and we expended every possible effort to ensure its reauthorization last year. We want to thank the Office of Justice Programs and the PSOB Office for recognizing the incredible work of the World Trade Center Health Program (WTCHP) and the Victims Compensation Fund (VCF) by adopting the current regulations from those important programs to assist in determining PSOB 9/11-related death and disability cases. NAPO represents every New York City police officer and every Port Authority police officer who responded on 9/11 and we appreciate that the PSOB Office is finally moving forward with determining death and disability claims related to WTC-related health conditions.

28 CFR Part 32

Under the current rule, claimants must file applications with the PSOB Office within three years of the injury date. The PSOB Office has indicated that it considers September 11, 2001 the injury date for all public safety officers who have died or been injured due to their response to the 9/11 terrorist attacks. This September 11th will be the fifteenth anniversary of those attacks.

Thousands of public safety officers heroically responded to the terrorist attacks on the World Trade Center, the Pentagon and Shanksville on September 11, 2001, and helped in the rescue and recovery efforts in the days, weeks and months after. As of August 1, 2016, the PSOB Program had 140 9/11 exposure-related death and disability claims yet to be determined. This is just a small fraction of the number of cases that would be eligible for PSOB death or disability claims.

Recommendation

The PSOB Office must waive the three year period from the injury date for filing claims, whether it be through a waiver included in this proposed rulemaking or

through a blanket extension for good cause shown, to allow for claimants with 9/11-related health conditions to apply for PSOB death and disability benefits.

Further, we recommend that the PSOB Office allow public safety officers (or personal representatives on behalf of a deceased officers) who have not submitted an application for PSOB benefits, to file a claim within three years of the effective date of these rules. This would be consistent with the VCF regulations (28 CFR 104.62(a)(1)), which allowed for a time limit on filing claims for those “who knew (or reasonably should have known)... that the individual suffered from physical harm at a 9/11 crash site as a result of the terrorist-related aircraft crashes of September 11, 2001, or as a result of debris removal”.

As the PSOB Office did not start the process of determining any 9/11exposure-related death or disability claims until April of this year, it is reasonable to assume that many would-be claimants assumed or were told by their agencies that the PSOB Office was not moving on these claims and therefore they did not submit applications within the three year time frame from September 11, 2001.

Recommendation

Additionally, there are public safety officers who responded to the 9/11 attacks registered with the World Trade Center Health Program (WTCHP) who may unfortunately develop late onset health conditions, such as cancer, which have long latency periods, that are included on the List of WTC-related health conditions and could lead to the officer’s death or permanent and total disability. The proposed rule must allow cases such as these to be eligible for applying for PSOB benefits.

We recommend that the PSOB Office allow for individuals to file for disability benefits within three years from the date of “disability determination”; when an officer is determined to be permanently and totally disabled from his or her 9/11-related illness or health condition.

§ 32.3 Definitions

In defining “physical harm”, the proposed rule cites an outdated version of the VCF regulations. On June 15, 2016, the VCF published an interim final rule that amended the definition of “physical harm” (28 CFR 104.2(d)) to read:

d) *Physical harm.* The term physical harm shall mean:

(1) A WTC-Related Physical Health Condition; or

(2) A physical injury to the body resulting from the 9/11 attacks that was treated by a medical professional within a reasonable time from the date of discovering such harm and is verifiable by medical records created by or at the direction of the medical professional who provided the medical care contemporaneously with the care; but

(3) Not including any Mental Health Condition.

Recommendation

The proposed rule must be amended to reference the new definition of “physical harm” in order that the PSOB Office mirrors how the VCF interprets the meaning of “physical harm”.

§ 32.3 Evidence

The WTCHP and the VCF recognize conditions “medically associated” with a covered WTC-related health condition and the PSOB Office should as well. The Zadroga Act authorized a physician at a WTCHP Clinical Center of Excellence to request a certification to provide treatment for a condition that is not on the list of WTC-related health conditions if such condition is “medically associated with a WTC-related health condition”. For purposes of the implementing regulations governing the WTCHP, a “health condition medically associated with a World Trade Center (WTC)-related health condition” is defined as “a condition that results from treatment of a WTC-related health condition or results from progression of a WTC-related health condition”.

Recommendation

The proposed rule should be amended to recognize “medically associated” conditions as part of the definition for “physical harm” in order to maintain as much continuity between the programs as possible.

§ 32.6 Payment and Repayment

An officer’s VCF payment is reduced if the officer or the surviving family has received a Social Security disability benefit, worker’s compensation, pension, life insurance, or even a lawsuit settlement payment relating to the 9/11 attacks. Under the proposed rule, the PSOB benefit will be reduced by the amount of the VCF payment, but it is unclear if the PSOB Office will be using the total compensation the officer was eligible for or if it will use the “net payment” of compensation to the claimant to calculate the offset.

Recommendation

The PSOB Office should use the final payment by the VCF to the claimant, after all of the reductions have been taken out of the award calculation, as the final compensation used to offset the PSOB award. There are cases where a claimant has a VCF award calculation of \$1.5 million that is then reduced to \$200,000 due to offsets, which should make them eligible for the remainder of the PSOB award.

§ 32.13 Definitions

The Dale Long Public Safety Officers’ Benefits Improvements Act does not define “something other than the mere presence of cardiovascular disease risk factors”. The proposed definition does not support the Congressional intent in passing the Dale Long Act of ensuring the family of a public safety officer who has died or has been permanently and totally disabled in the line of duty is provided for. We therefore ask this definition to be removed from the final rule.

We appreciate your consideration of our comments and concerns. If NAPO can provide any additional information on our comments, please feel free to contact me at: (703) 549-0775.

Sincerely,



William J. Johnson, Esq., CAE
Executive Director