

§ 32.4

(d) The amount payable under paragraph (a) of this section with respect to the death or permanent and total disability of a public safety officer shall be the amount payable under paragraphs (b) or (c) of this section as of the date of death or permanent and total disability of such officer, as the case may be.

§ 32.4 Reasonable doubt of coverage.

The Bureau shall resolve any reasonable doubt arising from the circumstances of the officer's death or permanent and total disability in favor of payment of the death or disability benefit.

§ 32.5 Findings of State, local, and Federal agencies.

The Bureau will give substantial weight to the evidence and findings of fact presented by State, local, and Federal administrative and investigative agencies. The Bureau will request additional assistance or conduct its own investigation when it believes that the existing evidence does not provide the Bureau with a rational basis for a decision on a material element of eligibility.

§ 32.6 Conditions on payment.

- (a) No benefit shall be paid—
 - (1) If the death or permanent and total disability was caused by the intentional misconduct of the public safety officer or by such officer's intention to bring about the officer's death or injury;
 - (2) If the public safety officer was voluntarily intoxicated at the time of the officer's death or catastrophic personal injury;
 - (3) If the public safety officer was performing the officer's duties in a grossly negligent manner at the time of the officer's death or catastrophic personal injury;
 - (4) To any individual who would otherwise be entitled to a benefit under this part if such individual's actions were a substantial contributing factor to the death of the public safety officer; or
 - (5) To any individual employed in a capacity other than a civilian capacity.
- (b) The Act applies to State and local public safety officers killed in the line

28 CFR Ch. I (7-1-99 Edition)

of duty on or after September 29, 1976; federal public safety officers killed on or after October 12, 1984; rescue squad or public emergency employees killed in the line of duty on or after October 15, 1986; and to each of these classes of officers permanently and totally disabled as a result of a catastrophic personal injury received in the line of duty on or after November 29, 1990.

§ 32.7 Intentional misconduct of the officer.

The Bureau will consider at least the following factors in determining whether death or permanent and total disability was caused by the intentional misconduct of the officer:

- (a) Whether the conduct was in violation of rules and regulations of the employer, or ordinances and laws, and—
 - (1) Whether the officer knew the conduct was prohibited and understood its import;
 - (2) Whether there was a reasonable excuse for the violation; or
 - (3) Whether the rule violated is habitually observed and enforced;
- (b) Whether the officer had previously engaged in similar misconduct;
- (c) Whether the officer's intentional misconduct was a substantial factor in the officer's death or permanent and total disability; and
- (d) Whether there was an intervening force which would have independently caused the officer's death or permanent and total disability and which would not otherwise prohibit payment of a benefit pursuant to this part.

§ 32.8 Intention to bring about death or permanent and total disability.

- The Bureau will consider at least the following factors in determining whether the officer intended to bring about the officer's own death or injury:
- (a) Whether the death or permanent and total disability was caused by insanity, through an uncontrollable impulse or without conscious volition to produce death or injury;
 - (b) Whether the officer had a prior history of attempted suicide or attempts to cause physical incapacitation;

(c) Whether the officer's intent to bring about the officer's death or injury was a substantial factor in the officer's death or permanent and total disability; and

(d) The existence of an intervening force or action which would have independently caused the officer's death or permanent and total disability and which would not otherwise prohibit payment of a benefit pursuant to this part.

§32.9 Voluntary intoxication.

The Bureau will apply the following evidentiary factors in cases in which voluntary intoxication is at issue in an officer's death or permanent and total disability.

(a) The primary factor in determining intoxication at the time the injury occurred, from which death or permanent and total disability resulted, is the blood alcohol level, including a post-mortem blood alcohol level in the case of a death.

(1) Benefits will be denied if a deceased or permanently and totally disabled public safety officer had a blood alcohol level of .20 per centum or greater; or

(2) Benefits will be denied if a deceased or permanently and totally disabled public safety officer had a blood alcohol level of at least .10 per centum but less than .20 per centum unless the Bureau receives convincing evidence that the public safety officer was not acting in an intoxicated manner immediately prior to death or the receipt of a catastrophic personal injury.

(b) Convincing evidence includes, but is not limited to: Affidavits or investigative reports demonstrating that the deceased or permanently and totally disabled public safety officer's speech, movement, language, emotion, and judgment were normal (for the officer) immediately prior to the injury which caused the death or the permanent and total disability.

(c) In determining whether an officer's intoxication was voluntary, the Bureau will consider:

(1) Whether, and to what extent, the officer had a prior history of voluntary intoxication while in the line of duty;

(2) Whether and to what degree the officer had previously used the intoxicant in question; and

(3) Whether the intoxicant was prescribed medically and was taken within the prescribed dosage.

BENEFICIARIES

§32.10 Order of priority.

(a) When the Bureau had determined that a death benefit may be paid according to the provisions of this subpart, a benefit of \$100,000, adjusted in accordance with §32.3(b), shall be paid in the following order of precedence:

(1) If there is no surviving child of such officer, to the surviving spouse of such officer;

(2) If there are a surviving child or children and a surviving spouse, one-half to the surviving child or children of such officer in equal shares, and one-half to the surviving spouse;

(3) If there is no surviving spouse, to the surviving child or children of such officer in equal shares; or

(4) If none of the above in paragraphs (a)(1) through (3) of this section to the surviving parent, or to the surviving parents in equal shares.

(b) If no one qualifies as provided in paragraph (a) of this section, no benefit shall be paid.

[57 FR 24913, June 11, 1992, as amended at 62 FR 37715, July 15, 1997]

§32.11 Contributing factor to death.

(a) No death benefit shall be paid to any person who would otherwise be entitled to a death benefit under this part if such person's intentional actions were a substantial contributing factor to the death of the public safety officer.

(b) When a potential beneficiary is denied death benefits under paragraph (a) of this section, the benefits shall be paid to the remaining eligible survivors, if any, of the officer as if the potential beneficiary denied death benefits did not survive the officer.

§32.12 Determination of relationship of spouse.

(a) Marriage should be established by one (or more) of the following types of evidence in the following order of preference: