

(ii) States that, in connection with deaths occurring under the circumstances described in paragraph (d)(2)(i) of this section, the public agency is not legally authorized to pay any benefits described in paragraph (a)(1)(i) of this section.

[73 FR 76534, Dec. 17, 2008]

**§ 32.16 Payment.**

(a) No payment shall be made to (or on behalf of) more than one individual, on the basis of being a public safety officer's parent as his mother, or on that basis as his father. If more than one parent qualifies as the officer's mother, or as his father, payment shall be made to the one with whom the officer considered himself, as of the injury date, to have the closest relationship, except that any biological or legally adoptive parent whose parental rights have not been terminated as of the injury date shall be presumed rebuttably to be such one.

(b) Any amount payable with respect to a minor or incompetent shall be paid to his legal guardian, to be expended solely for the benefit of such minor or incompetent.

(c) If more than one individual should qualify for payment—

(1) Under the Act, at 42 U.S.C. 3796(a)(4)(i), payment shall be made to each of them in equal shares, except that, if the designation itself should manifest a different distribution, payment shall be made to each of them in shares in accordance with such distribution; or

(2) Under the Act, at 42 U.S.C. 3796(a)(4)(ii), payment shall be made to each of them in equal shares.

[73 FR 76535, Dec. 17, 2008]

**§ 32.17 Request for Hearing Officer determination.**

In order to exhaust his administrative remedies, a claimant seeking relief from the denial of his claim shall request a Hearing Officer determination under subpart E of this part. Consistent with § 32.8, any denial that is not the subject of such a request shall constitute the final agency determination.

**Subpart C—Disability Benefit Claims**

**§ 32.21 Scope of subpart.**

Consistent with § 32.1, this subpart contains provisions applicable to claims made under the Act—

(a) At 42 U.S.C. 3796(b); or

(b) At 42 U.S.C. 3796c-1 or Public Law 107-37, with respect to a public safety officer's disability.

**§ 32.22 Time for filing claim.**

(a) Unless, for good cause shown, the Director extends the time for filing, no claim shall be considered if it is filed with the PSOB Office after the later of—

(1) Three years after the injury date; or

(2) One year after—

(i) A final determination of entitlement to receive, or of denial of, the benefits, if any, described in § 32.25(a)(1)(i); or

(ii) The receipt of the certification described in § 32.25(a)(1)(ii).

(b) A claimant may file with his claim such supporting documentary, electronic, video, or other nonphysical evidence and legal arguments as he may wish to provide.

[73 FR 76535, Dec. 17, 2008]

**§ 32.23 Definitions.**

*Direct result of an injury*—A disability results directly from an injury if the injury is a substantial factor in bringing the disability about.

*Gainful work* means full-or part-time activity that actually is compensated or commonly is compensated.

*Medical certainty*—A fact exists to a degree of medical certainty, when, pursuant to a medical assessment, the fact is demonstrated by convincing evidence.

*Permanently disabled*—An individual is permanently disabled only if there is a degree of medical certainty (given the current state of medicine in the United States) that his disabled condition—

(1) Will progressively deteriorate or remain constant, over his expected lifetime; or

(2) Otherwise has reached maximum medical improvement.

## § 32.24

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*Product of an injury*—Permanent and total disability is produced by a catastrophic injury suffered as a direct and proximate result of a personal injury if the disability is a direct result of the personal injury.

*Residual functional capacity* means that which an individual still is capable of doing, as shown by medical (and, as appropriate, vocational) assessment, despite a disability.

*Totally disabled*—An individual is totally disabled only if there is a degree of medical certainty (given the current state of medicine in the United States) that his residual functional capacity is such that he cannot perform any gainful work.

### § 32.24 PSOB Office determination.

(a) Upon its approving or denying a claim, the PSOB Office shall serve notice of the same upon the claimant. In the event of a denial, such notice shall—

(1) Specify the factual findings and legal conclusions that support it; and

(2) Provide information as to—

(i) Requesting a Hearing Officer determination; or

(ii) As applicable, moving to reconsider a negative disability finding.

(b) Upon a claimant's failure (without reasonable justification or excuse) to pursue in timely fashion the determination of his filed claim, the Director may, at his discretion, deem the same to be abandoned. Not less than thirty-three days prior thereto, the PSOB Office shall serve the claimant with notice of the Director's intention to exercise such discretion.

### § 32.25 Prerequisite certification.

(a) Except as provided in the Act, at 42 U.S.C. 3796c–1 or Public Law 107–37, and unless, for good cause shown, the Director grants a waiver, no claim shall be approved unless the following (which shall be necessary, but not sufficient, for such approval) are filed with the PSOB Office:

(1) Subject to paragraph (b) of this section, a certification from the public agency in which the public safety officer served (as of the injury date) that he was permanently and totally disabled as a direct result of a line of duty injury, and either—

(i) That he has received (or legally is entitled to receive) the maximum disability benefits (including workers' compensation) legally payable by the agency with respect to disabled public safety officers of his kind, rank, and tenure; or

(ii) Subject to paragraph (c) of this section, that the agency is not legally authorized to pay—

(A) Any benefits described in paragraph (a)(1)(i) of this section, to any person; or

(B) Any benefits described in paragraph (a)(1)(i) of this section, to public safety officers of the kind, rank, and tenure described in such paragraph; and

(2) A copy of—

(i) Each State, local, and federal income tax return filed by or on behalf of the public safety officer from the year before the injury date to the date of determination by the PSOB determining official; and

(ii) Any rulings made by any public agency that relate to the claimed disability.

(b) The provisions of paragraph (a)(1) of this section shall also apply with respect to every public agency that legally is authorized to pay disability benefits with respect to the agency described in that paragraph.

(c) No certification described in paragraph (a)(1)(ii) of this section shall be deemed complete unless it—

(1) Lists every public agency (other than BJA) that legally is authorized to pay disability benefits with respect to the certifying agency; or

(2) States that no public agency (other than BJA) legally is authorized to pay disability benefits with respect to the certifying agency.

### § 32.26 Payment.

The amount payable on a claim shall be the amount payable, as of the injury date, pursuant to the Act, at 42 U.S.C. 3796(b).

### § 32.27 Motion for reconsideration of negative disability finding.

A claimant whose claim is denied in whole or in part on the ground that he has not shown that his claimed disability is total and permanent may move for reconsideration, under § 32.28,