

§ 32.26

28 CFR Ch. I (7–1–11 Edition)

§ 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, of the specific finding as to the total and permanent character of the claimed disability (in lieu of his requesting a Hearing Officer determination with respect to the same).

§ 32.28 Reconsideration of negative disability finding.

(a) Unless, for good cause shown, the Director extends the time for filing, no negative disability finding described in § 32.27 shall be reconsidered if the motion under that section is filed with the PSOB Office later than thirty-three days after the service of notice of the denial.

(b) Notwithstanding any other provision of this section, no negative disability finding described in § 32.27 shall be reconsidered—

(1) If or after such reconsideration is rendered moot (*e.g.*, by the final denial of the claim on other grounds, without possibility of further administrative or judicial recourse); or

(2) If a request for a Hearing Officer determination has been filed in timely fashion with respect to such finding.

(c) Unless, for good cause shown, the Director grants a waiver, upon the making of a motion under § 32.27, reconsideration of the negative disability finding described in that section shall be stayed for three years. Upon the conclusion of the stay, the claimant shall have not more than six years to file evidence with the PSOB Office in support of his claimed disability.

(d) Upon a claimant's failure (without reasonable justification or excuse) to file in timely fashion evidence pursuant to paragraph (c) of this section, the Director may, at his discretion, deem the motion for reconsideration to be abandoned, as though never filed. 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.

(e) No negative disability finding described in § 32.27 shall be reversed unless a copy (which shall be necessary, but not sufficient, for such reversal) of each federal, State, and local income tax return filed by or on behalf of the claimant from the year before the date of the motion for reconsideration under that section to the date of reversal is filed with the PSOB Office.

(f) Upon its affirming or reversing a negative disability finding described in § 32.27, the PSOB Office shall serve notice of the same upon the claimant. In the event of an affirmance, such notice shall—

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

(2) Provide information as to requesting a Hearing Officer determination of the disability finding.

§ 32.29 Request for Hearing Officer determination.

(a) 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—

(1) Of—

(i) His entire claim, if he has not moved for reconsideration of a negative disability finding under § 32.27; or

(ii) Consistent with § 32.42(c), the grounds (if any) of the denial that are not the subject of such motion, if he has moved for reconsideration of a negative disability finding under § 32.27; and

(2) Of a negative disability finding that is affirmed pursuant to his motion for reconsideration under § 32.27.

(b) Consistent with § 32.8, the following shall constitute the final agency determination:

(1) Any denial not described in § 32.27 that is not the subject of a request for a Hearing Officer determination under paragraph (a)(1)(i) of this section;

(2) Any denial described in § 32.27 that is not the subject of a request for a Hearing Officer determination under paragraph (a)(1)(ii) of this section, unless the negative disability finding is

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the subject of a motion for reconsideration; and

(3) Any affirmance that is not the subject of a request for a Hearing Officer determination under paragraph (a)(2) of this section.

[73 FR 76535, Dec. 17, 2008]

Subpart D—Educational Assistance Benefit Claims

§ 32.31 Scope of subpart.

Consistent with § 32.1, this subpart contains provisions applicable to claims (*i.e.*, threshold claims and financial claims) made under the Act, at 42 U.S.C. 3796d-1.

§ 32.32 Time for filing claim.

(a) Subject to the Act, at 42 U.S.C. 3796d-1(c), and to paragraph (b) of this section, a claim may be filed with the PSOB Office at any time after the injury date.

(b) Unless, for good cause shown, the Director grants a waiver, no financial claim may be filed with the PSOB Office, with respect to a grading period that commences more than six months after the date of filing.

(c) 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]

§ 32.33 Definitions.

Application means claim (*i.e.*, a threshold claim or a financial claim).

Assistance means financial assistance.

Child of an eligible public safety officer means the child of a public safety officer, which officer is an eligible public safety officer.

Dependent—An individual is a dependent of an eligible public safety officer, if—

(1) Being a child of the officer, the individual—

(i) Was claimed properly as the officer's dependent (within the meaning of the Internal Revenue Code, at 26 U.S.C. 152) on the officer's federal income-tax return (or could have been claimed if such a return had been required by law)—

(A) For the tax year of (or immediately preceding) either the injury date or the date of the officer's death (with respect to a claim by virtue of such death); or

(B) For the relevant tax year (with respect to a claim by virtue of the officer's disability); or

(ii) Is the officer's posthumous child; or

(2) Being a spouse of the officer at the time of the officer's death or on the date of the officer's totally and permanently disabling injury, the individual received over half of his support from the officer (or had as his principal place of abode the home of the officer and was a member of the officer's household)—

(i) As of either the injury date or the date of the officer's death (with respect to a claim by virtue of such death); or

(ii) In the relevant tax year (with respect to a claim by virtue of the officer's disability).

Educational assistance benefits means benefits specifically to assist in paying educational expenses.

Educational expenses means such of the following as may be in furtherance of the educational, professional, or vocational objective of the program of education that forms the basis of a financial claim:

(1) Tuition and fees, as described in 20 U.S.C. 1087l(1) (higher education assistance);

(2) Reasonable expenses for—

(i) Room and board (if incurred for attendance on at least a half-time basis);

(ii) Books;

(iii) Computer equipment;

(iv) Supplies;

(v) Transportation; and

(3) For attendance on at least a three-quarter-time basis, a standard allowance for miscellaneous personal expenses that is the greater of—

(i) The allowance for such expenses, as established by the eligible educational institution for purposes of financial aid; or

(ii) \$200.00 per month.

Eligible dependent means an individual who—

(1) Is a dependent of an eligible public safety officer;