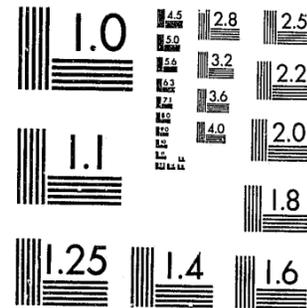


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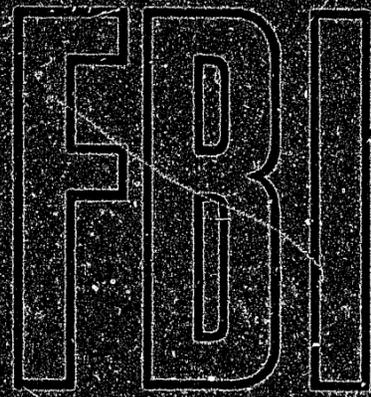
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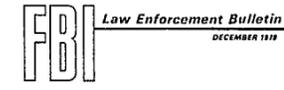
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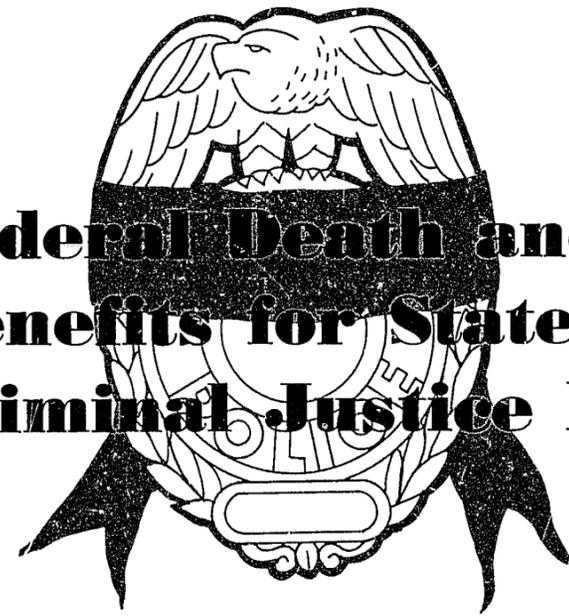
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Director William H. Webster's message concerns the problem of arson. Photo by William A. Gangloff, Fire Inspector, Washington, D.C., Fire Department.



Federal Death and Disability Benefits for State and Local Criminal Justice Employees



By
EDWIN D. HEATH, JR.*
Police Legal Adviser/
Municipal Court Prosecutor
Richardson, Tex.

During the past decade there have been two special congressional enactments establishing Federal benefits for non-Federal, State, and local criminal justice employees who are killed or disabled as a result of enforcing Federal or State laws. These benefits are found in different sections

of the U.S. Code and are, in some cases, difficult to ascertain in an individual case, thus this overview is provided.

In reviewing a possible claim for either death or disability benefits under these Federal laws, one must first determine if the deceased or disabled employee has entitlement status under a particular statute. Second, the entitlement status of any beneficiary

must be determined, particularly in death cases, where the survivor benefits are strictly controlled by statute. While the surviving spouse and minor children are ordinarily the primary recipients of death benefits for deceased employees, in some cases, benefits may be payable to eligible dependent parents, brothers, sisters, and grandparents when there are no eligible children or an eligible spouse.

* Mr. Heath is the former Director of Police, Legal Liaison Division, Dallas, Tex., Police Department.

Entitlement status to Federal benefits under 42 U.S.C. 3796 and 5 U.S.C. 8101 *et seq.* are strictly controlled by statute and apply only to public employees. Employees in the private sector, such as licensed security guards, private special officers, etc., are not covered by the terms of these acts. Such employees may be entitled to benefits under the general provisions of the Social Security Administration Act and the Veterans Administration Act, if otherwise eligible.

The eligibility for the benefits under the Federal law must be closely reviewed on a case-by-case basis, and can be determined only by the given facts of the situation that caused the death or disability of the non-Federal criminal justice employee. (It should be noted that benefits received are exempt as taxable income under the Internal Revenue Code, title 26 U.S.C.)

Public Safety Officers' Benefits Act of 1976

The Public Safety Officers' Benefits Act of 1976 (U.S.C., title 42, sec. 3796), Public Law 94-403, was passed by the 94th session of Congress, signed by the President, and has been effective since September 29, 1976. The Federal Government, under the terms of this act, will pay a maximum of \$50,000 to survivors of a non-Federal public safety officer for death or a death resulting from personal injury received in the *line of duty*. It is important to note that this act provides benefits only in cases resulting in the *death* of the employee. There are no provisions under the terms of this act

for disability payments similar in scope to Workmen's Compensation or title 5 U.S.C. benefits

Section 704(7) defines a "public safety officer" to be a person serving with a public agency in an official capacity, *with or without compensation* as a law enforcement officer or as a fireman; section 704(5) defines a "law enforcement officer" to include police, corrections, probation, parole, and judicial officers. Enforcement of a Federal law is not required for benefits under the provisions of this law. Benefits accrue as a result of death in the line of duty as a non-Federal, State, or local officer.

The rules and regulations for the administration of this act are found in the Federal Register, vol. 42, no. 88, May 6, 1977, pp. 23252-23261. These rules and regulations are found in title 28, Code of Federal Regulations, part 32.

This act was not intended to cover deaths arising from activities unrelated to law enforcement or firefighting. The act requires that a death or injury be the direct and proximate result of the performance of line of duty law enforcement or firefighting activities. Law enforcement personnel of the military services are expressly excluded from the provisions of this act.

"Line of duty" means any action in which an officer whose primary function is crime control or reduction, enforcement of the criminal law, or suppression of fires is obligated or authorized to perform by rule, regulation, condition of employment or service, or law, including those social, ceremonial, or athletic functions to which he or she is assigned, or for

which he or she is compensated, by the public agency they serve. For other officers, "line of duty" means any action the officer is so obligated or authorized to perform in the course of controlling or reducing crime, enforcing the criminal law, or suppressing fires.

The death or injury must be of a traumatic nature. A traumatic injury to the body would be one caused by external force, including injuries inflicted by bullets, explosives, sharp instruments, blunt objects, physical blows, chemicals, electricity, climatic conditions, infectious diseases, radiation and bacteria, but generally excluding stress and strain. Deaths directly attributable to exertion or stress, such as heart attacks and strokes encountered in the performance of duty, are not normally considered traumatic injuries, unless that stress or exertion resulted in or was caused by a traumatic injury or was a substantial factor in the officer's death, such as exertion or stress caused by effecting a lawful arrest.

Section 702 provides certain limitations to the benefits of this act. Benefits will be denied in any case where the death was caused by the intentional misconduct of the employee or in the case of suicide. Additionally, benefits will be denied when voluntary intoxication on the part of such employee is the proximate cause of death, or in cases where the beneficiary contributes to the death of the employee. Under this act, benefits are payable as follows: If there is no surviving child of the deceased officer, to the spouse of such officer; if there is no spouse, to the child or children in equal shares; if there are both a

"The Federal Government, under the terms of this act, will pay a maximum of \$50,000 to survivors of a non-Federal public safety officer for death or a death resulting from personal injury in the *line of duty*."

"Title 5, U.S.C. . . . provides a monthly pension supplement for the survivors of a local law enforcement officer who is killed or disabled while enforcing a Federal law."

spouse and one or more children, one-half to the spouse and one-half to the child or children in equal shares; if there is no survivor in these classes, to the dependent parent or parents in equal shares; and if no one qualifies as provided, no benefit shall be paid. Section 703 provides that the term "child" means any natural, illegitimate, adopted, or posthumous child or stepchild of the deceased employee who, at the time of the officer's death, is 18 years of age or younger; over 18 years of age and a student as defined in U.S.C., title 5, sec. 8101; or over 18 years of age and incapable of self-support because of physical or mental disability.

This act provides for a reduction in benefits if the deceased employee is entitled to pension supplement benefits under U.S.C., title 5, sec. 8191, *infra*.

Claims should be sent to the following address:

Public Safety Officers' Benefit Program
Law Enforcement Assistance Administration
U.S. Department of Justice
633 Indiana Avenue
Washington, D.C. 20531
(202) 376-2691

Title 5, U.S. Code Benefits

Title 5, U.S.C., sec. 8101, *et seq.* as extended by sec. 8191, provides a monthly pension supplement for the survivors of a local law enforcement officer who is killed or disabled while enforcing a Federal law. These benefits accrue only to law enforcement officers and do not include other criminal justice employees or firefighters. Benefits are provided for any non-

Federal law enforcement officer who is injured, sustains disease, or is killed under one of the following conditions:

1. While engaged in the apprehension or attempted apprehension of any person who has committed a crime against the United States, or who at that time was sought by a law enforcement authority of the United States for the commission of a crime against the United States, or who at that time was sought as a material witness in a criminal proceeding instituted by the United States;

2. While engaged in protecting or guarding a person held for the commission of a crime against the United States or as a material witness in connection with such a crime; or

3. While engaged in the lawful prevention of, or lawful attempt to prevent, the commission of a crime against the United States.

It is immaterial that the deceased or disabled officer was not aware that

they were enforcing a Federal law at the time of their death or injury, so long as it can be later determined that such was the case. Further it is immaterial whether the Federal crime results in a prosecution. The most common violation of Federal statutes resulting in the death or injury to a local law enforcement officer is the possession of a firearm by a convicted felon in violation of 18 U.S.C. 921-928 or possession of or possession for distribution of a federally controlled substance (21 U.S.C. 841(a)(1)). Federal law enforcement agencies are most helpful in providing investigative assistance to determine eligibility under these statutes.

For death, the act has a complicated scale of monthly benefits, depending on who survives the deceased employee. If there is no eligible child, the surviving spouse gets a monthly pension up to 45 percent of the officer's pay at the time of his or her

death. If there is a surviving child or children, the spouse gets 40 percent and each child gets an additional 15 percent of the officer's highest month-

"The most common violation of Federal statutes resulting in the death or injury to a local law enforcement officer is the possession of a firearm by a convicted felon. . . ."

ly salary as a monthly pension. The maximum monthly payment is 75 percent of the officer's highest pay at the time of his or her death. Dependent parents, grandparents, brothers, sisters, and grandchildren may be qualified for benefits in some cases, if there are no eligible spouse or minor children. There is a set-off provision under these statutes. Benefits under these provisions are maximum benefits and are reduced by the receipt of any State or local pension or financial assistance payments to which the deceased was a *contributing member*. Benefits for the spouse normally terminate on their death or remarriage. In the case of remarriage, the spouse is paid a 24-month final lump sum termination payment. Payments to surviving minor children, dependent grandchildren, or dependent brothers and sisters normally terminate upon the child reaching the age of 18, unless extended because such person is a student (to age 23 or 4 years beyond high school) or is incapable of self-support. Burial expenses not to exceed \$800 are payable in any individual case.

This act also provides for a pension supplement in cases involving tempo-

rary total disability over 21 days and permanent disabilities incurred in the enforcement of a Federal law which causes a loss of earning capacity. These provisions are similar in scope to State Workmen's Compensation Acts. Compensation generally is payable at the rate of two-thirds the officer's salary if he or she has no dependents, or three-fourths of his or her salary if there are one or more dependents. Provisions for the payment of medical, surgical, hospital services, intensive care, and vocational rehabilitation are also provided.

Claims should be directed as follows:

Chief, Branch of Special Claims
Employee Standards Administration
Office of Federal Employees Compensation
U.S. Department of Labor
Washington, D.C. 20211
(202) 382-1291

Social Security Administration Benefits

A maximum payment of \$255 is authorized for the death of a qualified person under social security. Monthly payments to minor children are available when the deceased has contributed the proper number of qualifying quarters of social security payments.

One word of caution applies in all cases of death or disability. Although some States and/or their political subdivisions do not participate in social security payments, the minor children of qualified deceased may be otherwise eligible through the deceased employee's prior employment, self-employment, or off-duty, part-time employment. In any case a claim should be filed. The Social Security Administration will determine if the deceased employee meets the eligibility requirements.

Monthly payments to disabled employees are available in cases of severe



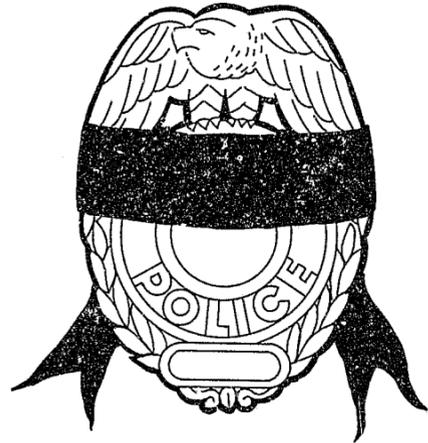
Edwin D. Heath, Jr.



Chief D. A. Byrd
Dallas Police Department

\$5.5 million in Federal Benefits

The survivors of 110 public safety officers and firefighters killed in the line of duty received \$5.5 million in Federal benefits during the first 6 months of 1978. The awards, \$50,000 in each case, were made under the Public Safety Officers' Benefits Act, which is administered by the Law Enforcement Assistance Administration. The act covers State and local police officers, corrections, probation, parole, and court personnel, firefighters, and members of legally organized volunteer fire departments.



disability. The Social Security Administration standards for disability requirements are not necessarily the same as other agencies.

Claims should be processed directly with the nearest office of the Social Security Administration.

Veterans Administration Benefits

A maximum of \$400 is authorized for funeral expenses, etc., for a qualified veteran. Pension assistance for the surviving spouse and minor children may be available depending on the level of their income.

Nonservice monthly disability payments are authorized. However, there is an income limit on the recipient's income to be eligible for these payments.

Claims should be processed directly with the request office of the Veterans Administration.

Administrative Procedures For Claims

The administrative claim forms and the requirement for the submission of supporting evidentiary data will vary from one agency to another. However,

certain basic documents are generally required in all cases:

General Documents

Any claim or application form required by administering agency,

Deceased employee's birth certificate,

Surviving spouse's birth certificate,

Birth certificate of all minor or otherwise dependent children when eligible (decree of adoption if applicable),

Marriage license,

Any divorce decree (if applicable),

Certified copy of death certificate,

Copy of the police offense, arrest, and other reports incidental to the death,

An affidavit from the head of the employee's agency certifying the employment status of the deceased employee,

An affidavit describing the facts causing the death,

Any necessary witness affidavits,

In claims made to the Office of Federal Employees Compensation, a statement from a Federal law enforcement agency that the deceased employee was enforcing a Federal statute (the facts, circumstances, and statute involved, etc.),

In the case of a female surviving spouse, a certificate from a licensed physician that she is or is not pregnant (this is required to protect the financial assistance rights of a posthumous child who may be

eligible for benefits at birth),

Such other documents as may be required by the appropriate administering agency, and

Physician's statements in cases of disability.

Special Requirements

Most Federal agencies require that all evidentiary documents be certified and bear the seal of the certifying agency with an intended or raised seal mark on the documents submitted. Do not send a xerox or other picture copies of the document with a seal unless permitted by the agency.

It must be emphasized that benefits are paid on a case-by-case determination of the facts and circumstances of the death or injury of the employee. Law enforcement administrators should be alert to possible Federal benefits for their officers and their families. The fact that one Federal agency pays or denies benefits under the terms of one law does not mean that another agency will be bound by the determination. Each Federal benefit program is administered separately.

Applications must be processed separately to each agency where benefits are possible. The collection of personal claim documentation is in many cases slow and difficult. Officers will want their eligible beneficiaries to receive all entitlement benefits as soon as possible. They can assist their families and departmental officials who will be helping with these claims by keeping a current document file along with their will and insurance policies.

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