

## PUBLIC HEALTH AND WELFARE

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was without subject matter  
administrative denial of sur-  
vivors benefits under this subchapter to  
city police officer; disagreeing  
*Russell v. Law Enforcement Assis-*  
7 F.2d 1255. *Tafoya v. U.S.*  
Law Enforcement Assistance  
84, 748 F.2d 1389.

Review contained in sec-  
tion does not apply to deci-  
sion; thus court of appeals had  
certain petition filed by widow  
review of administrative denial  
of benefits. *Law Enforcement Assis-*  
C.A.4, 1980, 620 F.2d 35.

Section extends to all police  
officers who die as a result of  
injuries sustained in deter-  
mining what constitutes  
Law Enforcement Assistance  
court should look to general  
law as guide to develop-  
and interpret job-relatedness  
consistently with workers' com-  
pensation law. *Russell v. Law Enforce-*  
Administration, C.A.9, 1980, 637

Officer killed in automobile  
accident while on duty was enti-  
tled to benefits under this section  
where officer was in car on the job,  
he usually worked on the road,  
he used his car for activities on  
the day of the accident and  
while driving home he was rendering  
aid by transferring piece of

## Conditions on benefits

Benefits are paid under this subchapter—

Death was caused by the intentional misconduct of the public safety officer; or  
Such officer's intention to bring about his death;

Public safety officer was voluntarily intoxicated at the time of his death;

Public safety officer was performing his duties in a grossly negligent manner at the time of his death;

Individual who would otherwise be entitled to a benefit under this subchapter whose death was caused by such individual's actions were a substantial contributing factor to the death of the public safety officer; or

Individual employed in a capacity other than a civilian capacity.

Section 1202, as added Pub.L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1220, and section 204(a)(2), Aug. 30, 1984, 98 Stat. 1561; Pub.L. 98-473, Title II, § 204(a)(2), Aug. 30, 1984, 98 Stat. 1561; Pub.L. 98-473, Title II, § 204(a)(2), Aug. 30, 1984, 98 Stat. 1561.

Section 1202 of Pub.L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1220, and section 204(a)(2), Aug. 30, 1984, 98 Stat. 1561; Pub.L. 98-473, Title II, § 204(a)(2), Aug. 30, 1984, 98 Stat. 1561.

Section 3796a, Pub.L. 94-420, as added Pub.L. 94-420, § 2, Oct. 10, 1976, 90 Stat. 1347, contained in this section as added by

law enforcement equipment, and, because as well as end duty detective he had to put in long hours, was driving home at particularly dangerous time late on Saturday night, when he was killed. *Russell v. Law Enforcement Assistance Administration*, C.A.9, 1980, 637 F.2d 1255.

Although Denver police officers were required to be on duty 24 hours a day, mother of deceased police officer could not recover survivor's death benefits under Public Safety Officers' Benefits Act in the absence of evidence that her son was killed while in the line of duty. *Tafoya v. U.S.*, 1985, 8 Cl.Ct. 256.

## 5. Rules and regulations

Since obvious and overwhelming cause of death of fireman was preexisting, prolonged and degenerative heart disease, party seeking survivors death benefits under this subchapter was not entitled to recover on basis of regulatory requirement that any reasonable doubt arising from circumstances of officer's death be resolved in favor of payment of death benefits. *Morrow v. U.S.*, 1981, 647 F.2d 1099, 227 Ct.Cl. 290, certiorari denied 102 S.Ct. 475, 454 U.S. 940, 70 L.Ed.2d 247.

Lack of evidence as to smoke or carbon monoxide inhalation by firefighter who died of heart failure in course of his duties while responding to house fire did not result from absence of regulations at time of firefighter's death subsequently recognizing that type of evidence as injury triggering heart attack so as to render it compensable under this subchapter; therefore, such regulations were not retroactively applied to claim of firefighter's widow, for benefits under this subchapter were denied on basis that firefighter's death was not direct and proximate result of personal injury within meaning of this subchapter. *North v. U.S.*, Cl.Ct.1982, 555 F.Supp. 382.

1984 Amendment. Cl. (1). Pub.L. 98-473 re-enacted existing provision.

Cl. (2). Pub.L. 98-473 substituted "if the public safety officer was voluntarily intoxicated at the time of his death" for "if voluntary intoxication of the public safety officer was the proximate cause of such officer's death".

Cl. (3). Pub.L. 98-473 added cl. (3). Former cl. (3) redesignated (4).

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Cl. (4). Pub.L. 98-473 redesignated former cl. (3) as (4) and substituted therein "individual" for "person" and "individual's actions" for "person's actions".

Pub.L. 98-411 added cl. (4), which excluded payment of benefits to any person employed in a capacity other than a civilian capacity.

Cl. (5). Pub.L. 98-473 added cl. (5).

Effective Date of 1984 Amendment. Amendment by Pub.L. 98-473 effective Oct. 1, 1984, and inapplicable with respect to injuries sustained before Oct. 1, 1984, see section 609AA(b)(1) of Pub.L. 98-473, set out as an Effective Date note under section 3711 of this title.

Repeals. Pub.L. 98-411, Title II, § 204(a)(2), Aug. 30, 1984, 98 Stat. 1561, cited as a credit to this section, was repealed by Pub.L. 98-473, Title II, § 609Z, Oct. 12, 1984, 98 Stat. 2107, effective Oct. 1, 1984.

Legislative History. For legislative history and purpose of Pub.L. 96-157, see 1979 U.S. Code Cong. and Adm. News, p. 2471. See, also, Pub.L. 98-473, 1984 U.S. Code Cong. and Adm. News, p. 3182.

## § 3796b. Definitions

As used in this subchapter—

(1) "child" means any natural, illegitimate, adopted, or posthumous child or stepchild of a deceased public safety officer who, at the time of the public safety officer's death, is—

(i) 18 years of age or under;

(ii) over 18 years of age and a student as defined in section 8101 of Title 5; or

(iii) over 18 years of age and incapable of self-support because of physical or mental disability;

(2) "dependent" means any individual who was substantially reliant for support upon the income of the deceased public safety officer;

(3) "Firefighter" includes an individual serving as an officially recognized or designated member of a legally organized volunteer fire department and an officially recognized or designated public employee member of a rescue squad or ambulance crew who was responding to a fire, rescue or police emergency;

(4) "intoxication" means a disturbance of mental or physical faculties resulting from the introduction of alcohol into the body as evidenced by—

(i) a post-mortem blood alcohol level of .20 per centum or greater; or

(ii) a post-mortem 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 his death;

or resulting from drugs or other substances in the body;

(5) "law enforcement officer" means an individual involved in crime and juvenile delinquency control or reduction, or enforcement of the laws, including, but not limited to, police, corrections, probation, parole, and judicial officers;

(6) "public agency" means the United States, any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States, or any unit of local government, department, agency, or instrumentality of any of the foregoing; and

Notes of Decisions  
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## 1. Line of duty

Fact that police officer died as result of his own negligence did not preclude finding that he died within "line of duty" so that his widow was entitled to benefits under this subchapter. *Harold v. U.S.*, 1980, 634 F.2d 547, 225 Ct.Cl. 168.

Proper focus in determining whether or not officer was acting in line of duty, for purposes of determining survivor's death benefits under Public Safety Officers' Benefits Act [Omnibus Crime Control and Safe Streets Act of 1968, §§ 701-704, as amended, 42 U.S.C.A. §§ 3796-3796c] is the nature of acts being performed by officer at time of his death. *Tafoya v. U.S.*, 1985, 8 Cl.Ct. 256.

## 2. Prerequisites to recovery

Police officer's death following struggle with suspect from coronary sclerotic hypertensive heart disease with acute and healed myocardial infarcts did not warrant award of survivor's death benefits under this subchapter where no injury was suffered. *Smykowski v. U.S.*, 1981, 647 F.2d 1103, 227 Ct.Cl. 284.

(7) "public safety officer" means an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, a firefighter, or rescue squad or ambulance crew.

(Pub.L. 90-351, Title I, § 1203, as added Pub.L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1220, and amended Pub.L. 98-411, Title II, § 204(a)(3), Aug. 30, 1984, 98 Stat. 1561; Pub.L. 98-473, Title II, § 609F, Oct. 12, 1984, 98 Stat. 2099; Pub.L. 99-500, Title I, § 101(b), [Title II, § 207], Oct. 18, 1986, 100 Stat. 1783-56; Pub.L. 99-591, Title I, § 101(b), [Title II, § 207], Oct. 30, 1986, 100 Stat. 3341-56.)

**Codification.** Another section 1203 of Pub.L. 90-351, forming a part of Title VII of Pub.L. 90-351 as originally enacted in 1968, is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

**Prior Provisions.** A prior section 3796b, Pub.L. 90-351, Title I, § 703, as added Pub.L. 94-430, § 2, Sept. 29, 1976, 90 Stat. 1347, contained provisions identical to this section as added by Pub.L. 96-157.

**1986 Amendments.** Cl. (3). Pub.L. 99-500, § 101(b) [Title II, § 207(1)], added provisions relating to members of rescue squads or ambulance crews.

Cl. (7). Pub.L. 99-500, § 101(b) [Title II, § 207(2)], added provisions covering member of a rescue squad or ambulance crew.

Pub.L. 99-591 made identical amendments as Pub.L. 99-500 to cls. (3) and (7) of this section.

**1984 Amendment.** Cl. (1). Pub.L. 98-473 substituted "§" for "eighteen" in subcls. (i) to (iii).

Cl. (2). Pub.L. 98-473 substituted "any individual" for "a person".

Cl. (3). Pub.L. 98-473 substituted "firefighter" includes an individual" for "fireman" includes a person".

Pub.L. 98-411, § 204(a)(3)(A), substituted "firefighter" for "fireman", added subcl. (A), and designated existing provisions as subcl. (B).

Cl. (4). Pub.L. 98-473 inserted subcls. (i) and (ii) as evidencing intoxication by alcohol and substituted provision for intoxication resulting from drugs or other substances in the body for provision for such intoxication resulting from the introduction of drugs or other substances into the body.

Cl. (5). Pub.L. 98-473 substituted "an individual" for "a person" and "enforcement of the laws, including, but not limited to" for "enforcement of

the criminal laws. This includes, but is not limited to".

Pub.L. 98-411, § 204(a)(3)(B), substituted "(A) the duties of whose position include performing work directly connected with—" and "(i) the control of crime or juvenile delinquency" for "involved in" and "crime and juvenile delinquency control or reduction", respectively, designated existing provision as subcl. (A)(ii), added subcls. (A)(iii) and (B), and incorporated existing provision in text set out following subcl. (B).

Cl. (6). Pub.L. 98-473 included the United States, substituted "Virgin Islands of the United States" for "Virgin Islands", and deleted "combination of such States, or units, or any" following "local government".

Pub.L. 98-411, § 204(a)(3)(C), defined "public agency" to include the United States.

Cl. (7). Pub.L. 98-473 substituted "an individual" for "a person" and "firefighter" for "fireman".

Pub.L. 98-411, § 204(a)(3)(D), substituted "firefighter" for "fireman".

**Effective Date of 1984 Amendment.** Amendment by Pub.L. 98-473 effective Oct. 1, 1984, and inapplicable with respect to injuries sustained before Oct. 1, 1984, see section 609AA(b)(1) of Pub.L. 98-473, set out as an Effective Date note under section 3711 of this title.

**Repeals.** Pub.L. 98-411, Title II, § 204(a)(3), Aug. 30, 1984, 98 Stat. 1561, cited as a credit to this section, was repealed by Pub.L. 98-473, Title II, § 609Z, Oct. 12, 1984, 98 Stat. 2107, effective Oct. 1, 1984.

**Legislative History.** For legislative history and purpose of Pub.L. 96-157, see 1979 U.S. Code Cong. and Adm. News, p. 2471. See, also, Pub.L. 98-473, 1984 U.S. Code Cong. and Adm. News, p. 3182; Pub.L. 99-591, 1986 U.S. Code Cong. and Adm. News, p. 5627.

§ 3796c. Administrative provisions; rules, regulations, and procedures; use of State and local administrative and investigative assistance

(a) The Bureau is authorized to establish such rules, regulations, and procedures as may be necessary to carry out the purposes of this subchapter. Such rules, regulations, and procedures will be determinative of conflict of laws issues arising under this subchapter. Rules, regulations, and procedures issued under this subchapter may include regulations governing the recognition of agents or other persons representing claimants under this subchapter before the Bureau. The Bureau may prescribe the maximum fees which may be charged for services performed in connection with any claim under this subchapter before the Bureau, and any agreement in violation of such rules and regulations shall be void.

(b) In making determinations under section 3796 of this title, the Bureau may utilize such administrative and investigative assistance as may be available from State and local agencies. Responsibility for making final determinations shall rest with the Bureau.

(Pub.L. 90-351, Title I, § 1204, as added Pub.L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1221, and amended Pub.L. 98-473, Title II, § 609F, Oct. 12, 1984, 98 Stat. 2100.)