



Public Safety Officers' Benefits (PSOB) Program

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Summary

The Public Safety Officers' Benefits (PSOB) program provides three different types of benefits to public safety officers and their survivors: a death, a disability, and an education benefit. The PSOB program is administered by the Department of Justice, Bureau of Justice Assistance's (BJA's), PSOB Office.

The PSOB program provides a one-time *death* benefit to eligible survivors of public safety officers whose deaths are the direct and proximate result of a traumatic injury sustained in the line of duty. For deaths occurring after October 1, 2009, the one-time lump sum benefit is \$311,810. The Hometown Heroes Survivor Benefits Act of 2003 (P.L. 108-182) amended current law to facilitate death benefits to the survivors of officers who die from certain line-of-duty heart attacks and strokes.

The PSOB program provides a one-time *disability* benefit to public safety officers who have been permanently and totally disabled by a catastrophic injury sustained in the line of duty, if the injury permanently prevents the officer from performing *any* gainful work. For injuries that result in permanent disability that occur on or after November 29, 2009, the benefit is \$311,810.

The PSOB program also provides assistance to spouses and children of public safety officers who have been killed or disabled in the line of duty who attend a program of education at an eligible educational institution. Educational assistance is available to the spouse and children of a public safety officer after the PSOB death or disability claim has been approved and awarded. As of October 1, 2009, the maximum award for a full-time student was \$925 per month.

Claimants have the opportunity to appeal denied claims. If the PSOB Office denies a claim, the claimant can request that a hearing officer review the claim. If the hearing officer denies the claim, the claimant can request that the Director of BJA review the claim. Claimants may file supporting evidence or legal arguments along with their request for a review by a hearing officer or the Director. If the claim is denied by the Director, claimants can appeal the denial in the United States Court of Federal Claims pursuant to 28 U.S.C. §1491(a).

The PSOB death benefit is a mandatory program, and the disability and education benefits are discretionary programs. As such, Congress appropriates "such sums as are necessary" each fiscal year to fund the PSOB death benefit program while appropriating separate amounts for both the disability and education benefits programs. This report will be updated as warranted.

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Introduction

The Public Safety Officers' Benefits (PSOB) program was authorized by P.L. 94-430, the Public Safety Officers' Benefits Act of 1976 (codified at 42 U.S.C. §3796 et seq., hereafter referred to as "the PSOB Act"). The PSOB program was "... designed to offer peace of mind to men and women seeking careers in public safety and to make a strong statement about the value that America places on the contributions of those who serve their communities in potentially dangerous circumstances."¹ The program was created by Congress out of a concern that "... the hazards inherent in law enforcement and fire suppression and the low level of state and local death benefits might discourage qualified individuals from seeking careers in public safety, thus hindering the ability of communities to protect themselves."²

The PSOB program is administered by the Department of Justice, Bureau of Justice Assistance's (BJA's), PSOB Office. The PSOB Office is responsible for reviewing, processing, and making determinations about claims for benefits under the PSOB program.³

The PSOB program originally provided only death benefits to survivors of public safety officers killed in the line of duty. Since its inception in 1976, the PSOB program has been expanded to provide disability benefits to public safety officers disabled by an injury suffered in the line of duty and education benefits to the spouses and children of public safety officers killed or disabled in the line of duty. Each of these benefits is discussed in more detail below.

Definition of a Public Safety Officer

Only individuals who are public safety officers, or their eligible survivors, are eligible to receive PSOB benefits. For the purposes of the PSOB Act, a "public safety officer" is defined as⁴

- an individual serving a public agency⁵ in an official capacity, with or without compensation, as a law enforcement officer,⁶ firefighter,⁷ chaplain,⁸ or a member of a rescue squad or ambulance crew;⁹

¹ Testimony of BJA Director Domingo S. Herraiz, U.S. Congress, Senate Committee on the Judiciary, *Justice Denied? Implementation of the Hometown Heroes Survivors Benefits Act*, hearing, 110th Cong., 1st sess., October 4, 2007, at http://judiciary.senate.gov/hearings/testimony.cfm?id=2972&wit_id=6703, accessed December 2, 2008 (hereafter "Testimony of D.S. Herraiz").

² Ibid.

³ Department of Justice, Office of Justice Programs, "Public Safety Officers' Benefits Program," 71 *Federal Register* 46029, August 10, 2006 (hereafter "PSOB: *Federal Register*").

⁴ 42 U.S.C. §3796b(9).

⁵ A "public agency" is defined as 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. 42 U.S.C. §3796b(8).

⁶ A "law enforcement officer" is defined as an individual who is involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal laws (including juvenile delinquency), including, but not limited to, police, corrections, probation, parole, and judicial officers. 42 U.S.C. §3796b(6).

⁷ A "firefighter" is defined as an individual serving as an officially recognized or designated member of a legally organized professional or volunteer fire department. 42 U.S.C. §3796b(4).

- an employee of the Federal Emergency Management Agency (FEMA) who is performing official duties, if those official duties are related to a major disaster or emergency that has been or is later declared to exist with respect to the area under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) and are determined by the Administrator of FEMA to be hazardous duties; or
- an employee of a state, local, or tribal emergency management or civil defense agency who is performing official duties in cooperation with FEMA, if those official duties are related to a major disaster or emergency that has been or is later declared to exist with respect to the area under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and are determined by the head of the agency to be hazardous duties.

PSOB Death Benefit

The PSOB program provides a death benefit to eligible survivors (i.e., the spouse, eligible children,¹⁰ the beneficiary of an officer's life insurance policy, or an officer's parents) of a public safety officer whose death is the direct and proximate result of a traumatic injury sustained in the line of duty or certain work-related heart attacks or strokes.¹¹ To receive a death benefit, the claimant must produce sufficient evidence to show that the public safety officer died as the direct and proximate result of an injury sustained in the line of duty.¹² Eligible survivors file claims for death benefits through the agency in which the public safety officer served.¹³

The PSOB program pays a one-time lump sum death benefit to eligible survivors of a public safety officer killed in the line of duty. The amount paid to the officer's survivors is the amount authorized to be paid on the date that the officer died, not the amount authorized to be paid on the date that the claim is approved.¹⁴ For deaths occurring after October 1, 2009, the benefit is \$311,810.¹⁵

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⁸ A "chaplain" is defined as any individual serving as an officially recognized or designated member of a legally organized volunteer fire department or legally organized police department, or an officially recognized or designated public employee of a legally organized fire or police department who was responding to a fire, rescue, or police emergency. 42 U.S.C. §3796b(2).

⁹ A "member of a rescue squad or ambulance crew" is defined as an officially recognized or designated public employee member of a rescue squad or ambulance crew. 42 U.S.C. §3796b(7).

¹⁰ An "eligible child" is defined as any natural, illegitimate, adopted, or posthumous child or stepchild or the public safety officer who, at the time of the officer's death, was 18 or younger, or between 19 and 22 (inclusive) and a full-time student at an eligible educational institution, or 18 or older and incapable of self-support because of mental or physical disabilities. 42 U.S.C. §3796b(3).

¹¹ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, *Public Safety Officers' Benefits (PSOB) Program*, at http://www.ojp.usdoj.gov/BJA/grant/psob/psob_main.html, accessed December 2, 2008 (hereafter "PSOB program").

¹² PSOB: *Federal Register*, p. 46028; U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, *Public Safety Officers' Benefits Program: Death Benefits*, at http://www.ojp.usdoj.gov/BJA/grant/psob/psob_death.html, accessed December 2, 2008 (hereafter "PSOB: Death Benefits").

¹³ *Ibid.*

¹⁴ 42 U.S.C. §3796(i).

¹⁵ Per 42 U.S.C. §3796(h), since October 15, 1988, the death and disability benefit paid under the PSOB program has (continued...)

PSOB death benefits are paid to eligible survivors in the following order:

- If the officer is survived by only a spouse and no children, 100% of the death benefit goes to the spouse.
- If the officer is survived by a spouse and children, 50% of the death benefit goes to the spouse and the remaining 50% is distributed equally amongst the officer's children.
- If the officer is survived by only children and not a spouse, the death benefit is equally distributed amongst the officer's children.
- If the officer is survived by neither a spouse nor children, the death benefit is paid to the individual designated by the officer in his or her most recently executed life insurance policy, provided that the beneficiary has survived the officer.
- If the officer is survived by neither a spouse or eligible children, and the officer does not have a life insurance policy, the death benefit is equally distributed between the officer's surviving parents.¹⁶
- Survivors of *state* and *local* law enforcement officers and firefighters may receive a death benefit if the officer or firefighter died on or after September 29, 1976. Survivors of *federal* law enforcement officers and firefighters may receive a death benefit if the officer or firefighter died on or after October 12, 1984. A death benefit may be awarded to survivors of members of federal, state, and local public rescue squads or ambulance crews who died on or after October 15, 1986. A death benefit may be awarded to survivors of FEMA personnel and state, local, and tribal emergency management and civil defense agency employees working in cooperation with FEMA who died on or after October 30, 2000. Finally, survivors of chaplains who serve a police or fire department in an official capacity who died on or after September 11, 2001, are eligible to receive a death benefit under the PSOB program.

Hometown Heroes Act

The Hometown Heroes Survivor Benefits Act of 2003 (P.L. 108-182, hereafter referred to as “the Hometown Heroes Act”) expanded the circumstances under which public safety officers' deaths resulting from heart attacks and strokes may be covered under the PSOB program. The Hometown Heroes Act created a statutory presumption that public safety officers who die from a heart attack or stroke while on duty on, after, or within 24 hours of participating in a non-routine stressful or strenuous physical public safety activity¹⁷ or training died in the line of duty for

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been adjusted each year on October 1 to reflect the percentage change in the Consumer Price Index.

¹⁶ PSOB: Death Benefits.

¹⁷ “Non-routine strenuous physical activity” is defined as line-of-duty activity, except activity excluded by 42 U.S.C. §3796l that is not performed as a matter of routine and entails an unusually high level of physical exertion. “Non-routine stressful physical activity” is defined as line-of-duty activity, except activity excluded by 42 U.S.C. §3796l, that is not performed as a matter of routine; entails non-negligible physical exertion; and occurs (1) with respect to a situation in which a public safety officer is engaged, under circumstances that objectively and reasonably pose (or appear to pose) significant dangers, threats, or hazards (or reasonably-foreseeable risks thereof) not faced by similarly (continued...)

benefit purposes. Actions that are clerical, administrative, or non-manual in nature are not considered “non-routine stressful or strenuous activities” under the Hometown Heroes Act. The statutory presumption can be overcome with competent medical evidence to the contrary.¹⁸ Only the survivors of an officer who died of a heart attack or stroke on or after December 15, 2003, are eligible to receive a death benefit pursuant to the Hometown Heroes Act.

BJA reported that it encountered a series of problems in implementing the provisions of the Hometown Heroes Act. In January 2004, BJA amended the PSOB regulations to implement the Hometown Heroes Act.¹⁹ BJA chose to “overhaul” the PSOB regulations because they had not been significantly amended in 30 years and because the PSOB Act had been amended 18 times since 1976, which resulted in overlapping statutory and regulatory structures.²⁰ After the draft regulations were posted in the *Federal Register* for a comment period, Congress enacted additional amendments to the PSOB Act, which required additional modifications to the PSOB regulations and a new comment period.²¹ The final PSOB regulations went into effect on September 11, 2006.

The PSOB Office could not review claims for death benefits submitted pursuant to the Hometown Heroes Act until the PSOB regulations were finalized, which resulted in a backlog of claims.²² The PSOB Office is working to reduce the backlog of claims. To help reduce the backlog, BJA hired additional staff to review PSOB claims, contracted with additional private forensic pathologists, identified additional hearing officers for appeals (see below), and created an online system for submitting claims.²³ The PSOB Office is working toward a goal of processing claims within 90 days of receiving all necessary information from agencies and survivors.²⁴

The PSOB Office has changed its policy to address the concerns of the public safety community about the way that Hometown Heroes Act claims are settled. The Director of BJA has directed the PSOB Office not to require claimants to submit medical history records unless something in the claim affirmatively suggests that something other than the line of duty caused the fatal heart attack or stroke, or that it was more likely than not that the heart attack or stroke was imminent.²⁵ In cases where the PSOB Office requests medical records, the PSOB Office has been instructed to review the medical records for mitigating evidence in favor of the claim.²⁶ Prior to this change in

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situated members of the public in the ordinary course, and provoke, cause, or occasion an unusually high level of alarm, fear, or anxiety; or (2) with respect to a training exercise in which a public safety officer participates, under circumstances that objectively and reasonably simulate in realistic fashion situations that pose significant dangers, threats, or hazards, and provoke, cause, or occasion an unusually high level of alarm, fear, or anxiety. 28 CFR § 32.13.

¹⁸ “Competent medical evidence to the contrary” is defined as when evidence indicates to a degree of medical probability that circumstances other than any engagement or participation described at 42 U.S.C. 3796(k)(1), considered in combination (as one circumstance) or alone, were a substantial factor in bringing about the heart attack or stroke. 28 CFR §32.13.

¹⁹ Testimony of D.S. Herraiz.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

²⁵ Memorandum from Domingo S. Herraiz, Director of the Bureau of Justice Assistance, Re: “Competent Medical Evidence to the Contrary,” October 2, 2007.

²⁶ Ibid.

policy, claimants were required to submit 10 years of medical records to verify that the officer died from a heart attack or stroke caused by the line of duty.²⁷ The Director of BJA has also instructed the PSOB Office with regard to the application of the term “non-routine” activity. An activity is no longer considered to be “routine” because it is described by the public safety agency as being “routine” or “ordinary.”²⁸ When the PSOB Office determines whether an activity is “routine,” the Office’s determination is informed less by the frequency with which the activity is performed than by its stressful or strenuous character.²⁹ The Director chose to clarify the definition of “non-routine” activity because of concerns that the PSOB Office was too widely defining which activities were considered “routine.”

DOJ OIG Report on the Implementation of the Hometown Heroes Act

In March of 2008, the Department of Justice (DOJ) Office of the Inspector General (OIG) issued a report on its assessment of, among other things, the timeliness of OJP’s processing of claims under the Hometown Heroes Act.³⁰ The OIG found that as of November 29, 2007, OJP had completed only half of the claims it had received since the Hometown Heroes Act was passed. One of the reasons cited by the OIG for the backlog of claims was the 33 months it took OJP to issue new regulations to implement the Act, during which time OJP developed a backlog of 201 claims.³¹ The OIG found that the processing of Hometown Heroes Act claims was slow even after the regulations were in place. The delays in processing the claims were in part, according to the OIG, the result of most claims being submitted without the required documentation, the Office of General Counsel’s legal review of each claim was time consuming, and decisions on some claims were delayed because OJP could not obtain needed pathology reviews. Starting in the fall of 2007, OJP implemented new policies and procedures that were designed to expedite the claims review process, including providing more guidance to claimants and changing internal procedures to speed the claims review process. The OIG found evidence that the policies and procedures put in place by OJP increased its ability to quickly review a claim and make a determination. In FY2007, OJP issued determinations on 72 Hometown Heroes Act claims, but in the first two months of FY2008, it issued determinations on 40 claims.³² By the end of the OIG review, OJP had reduced the claims backlog from 201 to 99.

PSOB Disability Benefit

Title XIII of P.L. 101-647 expanded the scope of the PSOB program to provide a disability benefit to public safety officers who have been permanently and totally disabled by a catastrophic injury³³ sustained in the line of duty, if the injury permanently prevents the officer from

²⁷ Testimony of D.S. Herraiz.

²⁸ Memorandum from Domingo S. Herraiz, Director of the Bureau of Justice Assistance, Re: “Nonroutine Stressful or Strenuous Physical Activity,” October 2, 2007.

²⁹ Ibid.

³⁰ U.S. Department of Justice, Office of the Inspector General, *The Office of Justice Programs’ Implementation of the Hometown Heroes Survivors Benefits Act of 2003*, report number I-2008-005, March 2008, available online at <http://www.usdoj.gov/oig/reports/OJP/e0805/final.pdf>, accessed November 20, 2008.

³¹ Ibid., p. i.

³² Ibid., p. xi.

³³ “Catastrophic injury” is defined as an injury that permanently prevents an individual from performing any gainful work. 42 U.S.C. §3796b(1).

performing *any* gainful work.³⁴ The claimant is responsible for producing sufficient evidence to prove that he or she suffered a permanent and total disability as the direct and proximate result of a catastrophic injury sustained in the line of duty and that the disability prevents him or her from performing any gainful work.³⁵ Medical retirement for a line-of-duty disability does not, in and of itself, establish eligibility for a disability benefit.³⁶

Like the PSOB death benefit program, the disability benefit program pays a one-time lump sum disability benefit to public safety officers disabled in the line of duty. For injuries that result in permanent disability that occur on or after November 29, 2009, the benefit is \$311,810.

Most public safety officers (federal, state, and local law enforcement officers; firefighters; and members of public rescue squads and ambulance crews) are eligible to receive disability benefits if they were disabled by an injury suffered in the line of duty on or after November 29, 1990. As of October 30, 2000, employees of FEMA and state, local, and tribal emergency management and civil defense agency employees working in cooperation with FEMA are eligible to receive disability benefits. Chaplains who serve a police or fire department in an official capacity who are disabled on or after September 11, 2001, are also eligible to receive disability benefits under the PSOB program.

Limitations on Death and Disability Benefits

A death or disability benefit will not be paid

- if the death or disability was caused by the intentional misconduct of the public safety officer or the officer's intention to bring about his or her death or catastrophic injury;
- if the public safety officer was voluntarily intoxicated at the time of his or her death or catastrophic injury;
- if the public safety officer was performing his or her duties in a grossly negligent manner at the time of his or her death or catastrophic injury;
- if an eligible survivor's actions were a substantial contributing factor to the officer's death or catastrophic injury; or
- with respect to any individual employed in a capacity other than a civilian capacity.³⁷

Public Safety Officers' Educational Assistance

The Federal Law Enforcement Dependents Assistance Act of 1996 (P.L. 104-238) authorized the Public Safety Officers' Educational Assistance (PSOEA) program. PSOEA provides assistance to

³⁴ PSOB program.

³⁵ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, *Public Safety Officers' Benefits Program: Disability Benefits*, at http://www.ojp.usdoj.gov/BJA/grant/psob/psob_disability.html, accessed December 2, 2008.

³⁶ *Ibid.*

³⁷ 42 U.S.C. §3796a.

spouses and children of public safety officers killed or disabled in the line of duty who attend a program of education³⁸ at an eligible educational institution.³⁹ PSOEA funds may be used to defray expenses associated with attending college, including tuition and fees, room and board, books, supplies, and other education-related costs.⁴⁰

Assistance through the PSOEA program is available to the spouse and children of a public safety officer *after* the PSOB death or disability claim has been approved and awarded.⁴¹ As of October 1, 2009, the maximum award for a full-time student was \$925 per month.⁴² Award amounts are proportionately decreased for individuals attending school part-time. Under current law, a PSOEA award is reduced—and in some cases may be eliminated—by the amount of financial aid the applicant is eligible to receive from federal, state, or local governments or public schools.⁴³ PSOEA awards are not affected by the amount of financial aid the applicant receives from loans, private schools, or private foundations or organizations.⁴⁴ PSOEA awards may be discontinued if the applicant fails to make satisfactory progress while enrolled in school (i.e., maintains a 2.0 grade point average).⁴⁵

The spouse of a deceased or disabled public safety officer is eligible to receive education benefits under PSOEA anytime during his or her lifetime. However, the child of a deceased or disabled public safety officer can receive benefits under PSOEA only for educational expenses incurred prior to his or her 27th birthday. A spouse or child of a deceased or disabled public safety officer cannot receive PSOEA funds for more than 45 months of full-time education or a proportionate period of part-time education.⁴⁶

Applicants can apply for retroactive assistance for semesters or quarters already completed, as long as they were completed after the date of the public safety officer's death or disability.⁴⁷ Applicants can apply for prospective assistance only for the current or upcoming semester or quarter.

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A “program of education” is defined as any curriculum or any combination of courses or subjects pursued at an eligible educational institution, which generally is accepted as necessary to fulfill requirements for the attainment of a predetermined and identified educational, professional, or vocational objective. It includes course work for the attainment of more than one objective if, in addition to the previous requirements, all the objectives generally are recognized as reasonably related to a single career field. 42 U.S.C. §3796d-6(2).

³⁹ An “eligible educational institution” is defined as an institution described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on October 3, 1996, and eligible to participate in programs under Title IV of the Act. 42 U.S.C. §3796d-6(3).

⁴⁰ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, *Public Safety Officers' Benefits Program: Educational Assistance Benefits*, available at http://www.ojp.usdoj.gov/BJA/grant/psob/psob_education.html, accessed December 2, 2008 (hereafter “PSOB: Educational Assistance Benefits”).

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ 42 U.S.C. §3796d-1(3).

⁴⁴ Claimants who are in default on any student loan obtained through Title IV of the Higher Education Act of 1965 (e.g., Stafford or Perkins loans) are not eligible to receive PSOEA benefits unless the benefits are used to pay back the defaulted loan. PSOB: Educational Assistance Benefits.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ 28 CFR §32.36.

Under the PSOE program, the families of federal, state, and local police, fire, and emergency public safety officers are covered for line-of-duty *deaths* that occurred on or after January 1, 1978. Families of disabled federal law enforcement officers are eligible for benefits if the officer was *disabled* on or after October 3, 1996, whereas families of disabled state and local police, fire, and emergency public safety officers are eligible for benefits if the officer was *disabled* on or after November 13, 1998. Families of FEMA personnel and state, local, and tribal emergency management and civil defense agency employees are covered for such injuries sustained on or after October 30, 2000.

Appeal of Denied Claims

Claimants are allowed to appeal claims that are denied by the PSOB Office. A claimant has 33 days after being served with a notice of denial to request a determination by a hearing officer.⁴⁸ The claimant may file supporting evidence or legal arguments along with the request for a hearing officer determination.⁴⁹ The supporting evidence and legal arguments must be filed with both the hearing officer and the PSOB Office. The claim is assigned to a hearing officer, who reviews the claim *de novo*—meaning that the hearing officer reviews the entire claim anew rather than reviewing the finding, determinations, decisions, judgements, rulings, or other actions of the PSOB Office—and makes a determination.⁵⁰

A claimant appealing the denial of a death or disability benefit can request that the hearing officer hold a hearing.⁵¹ A request for a hearing will not be granted if the claimant does not request a hearing within 90 days of the claim being assigned to a hearing officer. The hearing provides the hearing officer with the opportunity to collect evidence from the claimant and any other evidence the hearing officer may decide is necessary or useful.⁵² At the hearing, the hearing officer may exclude evidence whose probative value is substantially outweighed by undue delay, waste of time, or needless presentation of cumulative evidence.⁵³ Witnesses (other than the claimant and anyone who the claimant has shown to be essential to the presentation of the claim) are prevented from hearing the testimony of other witnesses at the hearing.⁵⁴

If a claim is denied by the hearing officer, the claimant can appeal to the Director of BJA (“the Director”). If the denied claim is not appealed to the Director, the hearing officer’s determination is considered the final agency determination of the claim.⁵⁵ A claimant has 33 days after being

⁴⁸ A “hearing officer” is appointed pursuant to 42 U.S.C. §3787, which reads, “The Bureau of Justice Assistance, the National Institute of Justice, and the Bureau of Justice Statistics may appoint such hearing examiners or administrative law judges or request the use of such administrative law judges selected by the Office of Personnel Management pursuant to [5 U.S.C. § 3344], as shall be necessary to carry out their respective powers and duties under this chapter. [BJA], [NIJ], and [BJS] or upon authorization, any member thereof or any hearing examiner or administrative law judge assigned to or employed thereby shall have the power to hold hearings and issue subpoenas, administer oaths, examine witnesses, and receive evidence at any place in the United States they respectively may designate.”

⁴⁹ 28 CFR §32.42.

⁵⁰ 28 CFR §32.43.

⁵¹ 28 CFR §32.45.

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ 28 CFR §32.46.

notified by the hearing officer that the claim has been denied to file an appeal with the Director.⁵⁶ Like the request for a hearing officer determination, the claimant may file supporting evidence or legal arguments along with the request for an appeal. If the Director denies the claim, the claimant can appeal the denial in the United States Court of Federal Claims pursuant to 28 U.S.C. §1491(a).⁵⁷ However, to petition the court to review the denial of a claim, the claimant must exhaust the administrative remedies available, meaning that the claimant must have asked for both a hearing officer determination and a Director review. The Director's determination constitutes the final agency determination of the claim.⁵⁸

PSOB Appropriations and Obligations

The PSOB death benefit is a mandatory program, and the disability and education benefits are discretionary programs. As such, Congress appropriates “such sums as are necessary” each fiscal year to fund the PSOB death benefit program while appropriating separate amounts for both the disability and education benefits programs. **Table 1** outlines the appropriations and obligations for all three PSOB benefit programs for FY2003-FY2009. The amount obligated indicates the amount of benefits awarded each fiscal year for each PSOB program. In some cases, a claim might be submitted in one fiscal year, but the actual award is made in another, hence the difference between each fiscal year's appropriation and obligations. Benefits are paid with funds appropriated for the fiscal year in which the officer was disabled or killed in the line of duty, not the fiscal year in which the claim was approved. For example, if an officer was disabled in FY2005 but the claim was not approved until FY2007, the officer's claim would be paid with funds appropriated in FY2005.

Between FY2007 and FY2008, the appropriation for the PSOB death benefit increased 120.3% and obligations for death benefits increased 164.8%. According to OJP, for FY2008 it requested an additional \$55 million dollars in budget authority to cover an unintended increase in PSOB death benefits claims.⁵⁹ According to OJP, the influx in PSOB death benefits claims can be attributed to several factors, including an increase in new claims pursuant to the Hometown Heroes Act and faster processing of the backlog of Hometown Heroes Act claims.⁶⁰

⁵⁶ 28 CFR §32.52.

⁵⁷ 28 CFR §32.55.

⁵⁸ *Ibid.*

⁵⁹ Email correspondence on November 25, 2008, with U.S. Department of Justice, Office of Justice Programs, Office of Communications.

⁶⁰ *Ibid.*

Table I. Appropriations and Obligations for PSOB Death, Disability, and Education Benefits, by Fiscal Year, FY2003-FY2009
(in thousands of \$)

Fiscal Year	Appropriation			Obligations		
	Death	Disability	Education	Death	Disability	Education
FY2003	\$49,054	\$3,974	\$0	\$53,367	\$2,254	\$931
FY2004	\$49,054	\$2,968	\$0	\$40,683	\$2,007	\$756
FY2005	\$63,054	\$3,567	\$2,758	\$48,663	\$2,217	\$852
FY2006	\$64,000	\$4,822	\$4,012	\$53,006	\$3,776	\$882
FY2007	\$64,000	\$4,822	\$4,012	\$42,432	\$2,300	\$1,044
FY2008	\$141,000	\$4,854	\$3,980	\$112,344	\$2,952	\$1,160
FY2009	\$110,000	\$7,500	\$1,600	\$94,985	\$7,394	\$1,015

Source: U.S. Department of Justice, Office of Justice Program, Office of Communications.

Note: Appropriations reflect rescissions.

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