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Act, at 42 U.S.C. 3796(a) or (b), has been approved, with respect to the same injury.

§ 32.3 Definitions.

Act means the Public Safety Officers' Benefits Act of 1976 (generally codified at 42 U.S.C. 3796, *et seq.*; part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968) (including (uncodified) section 5 thereof (rule of construction and severability)), as applicable according to its effective date and those of its various amendments (*e.g.*, Sept. 29, 1976 (deaths of State and local law enforcement officers and fire-fighters); Jan. 1, 1978 (educational assistance); Oct. 1, 1984 (deaths of federal law enforcement officers and fire-fighters); Oct. 18, 1986 (deaths of rescue squad and ambulance crew members); Nov. 29, 1990 (disabilities); Oct. 30, 2000 (disaster relief workers); Sept. 11, 2001 (chaplains and insurance beneficiaries); Dec. 15, 2003 (certain heart attacks and strokes); and Apr. 5, 2006 (designated beneficiaries)); and also includes Public Law 107-37 and sections 611 and 612 of the USA PATRIOT Act (all three of which relate to payment of benefits, described under subpart 1 of such part L, in connection with terrorist attacks).

Adopted child—An individual is an adopted child of a public safety officer only if—

(1) The individual is legally adopted by the officer; or

(2) As of the injury date, and not being a stepchild, the individual was—

(i) Known by the officer not to be his biological first-generation offspring; and

(ii) After the officer obtained such knowledge, in a parent-child relationship with him.

Authorized commuting means travel by a public safety officer—

(1) In the course of actually responding to a fire, rescue, or police emergency; or

(2) Between home and work (at a situs authorized or required by the public agency he serves)—

(i) Using a vehicle provided by such agency, pursuant to a requirement or authorization by such agency that he use the same for commuting; or

(ii) Using a vehicle not provided by such agency, pursuant to a requirement by such agency that he use the same for work.

BJA means the Bureau of Justice Assistance, OJP.

Cause—A death, injury, or disability is caused by intentional misconduct if—

(1) The misconduct is a substantial factor in bringing it about; and

(2) It is a reasonably foreseeable result of the misconduct.

Chaplain means a clergyman, or other individual trained in pastoral counseling, who meets the definition provided in the Act, at 42 U.S.C. 3796b(2).

Child of a public safety officer means an individual—

(1) Who—

(i) Meets the definition provided in the Act, at 42 U.S.C. 3796b(3), in any claim—

(A) Arising from the public safety officer's death, in which the death was simultaneous (or practically simultaneous) with the injury; or

(B) Filed after the public safety officer's death, in which the claimant is the officer's—

(1) Biological child, born after the injury date;

(2) Adopted child, adopted by him after the injury date; or

(3) Stepchild, pursuant to a marriage entered into by him after the injury date; or

(ii) In any claim not described in paragraph (1)(i) of this definition—

(A) Meets (as of the injury date) the definition provided in the Act, at 42 U.S.C. 3796b(3), *mutatis mutandis* (*i.e.*, with "deceased" and "death" being substituted, respectively, by "deceased or disabled" and "injury"); or

(B) Having been born after the injury date, is described in paragraph (1)(i)(B)(1), (2), or (3) of this definition; and

(2) With respect to whom the public safety officer's parental rights have not been terminated, as of the injury date.

Convincing evidence means clear and convincing evidence.

Crime means an act or omission punishable as a criminal misdemeanor or felony.

Criminal laws means that body of law that declares what acts or omissions are crimes and prescribes the punishment that may be imposed for the same.

Department or agency—An entity is a department or agency within the meaning of the Act, at 42 U.S.C. 3796b(8), and this part, only if the entity is—

- (1) A court;
- (2) An agency described in the Act, at 42 U.S.C. 3796b(9)(B) or (C); or
- (3) Otherwise a public entity—
 - (i) That is legally an express part of the internal organizational structure of the relevant government;
 - (ii) That has no legal existence independent of such government; and
 - (iii) Whose obligations, acts, omissions, officers, and employees are legally those of such government.

Determination means the approval or denial of a claim (including an affirmation or reversal pursuant to a motion for reconsideration under § 32.27), or the determination described in the Act, at 42 U.S.C. 3796(c).

Director means the Director of BJA.

Direct and proximate result of an injury—Except as may be provided in the Act, at 42 U.S.C. 3796(k), a death or disability results directly and proximately from an injury if the injury is a substantial factor in bringing it about.

Disaster relief activity means activity or an action encompassed within the duties described in the Act, at 42 U.S.C. 3796b(9)(B) or (C).

Disaster relief worker means any individual who meets the definition provided in the Act, at 42 U.S.C. 3796b(9)(B) or (C).

Disturbance includes any significant and negative alteration, any significant negative deviation from the objectively normal, or any significant deterioration.

Divorce means a legally-valid divorce from the bond of wedlock (*i.e.*, the bond of marriage), except that, notwithstanding any other provision of law, a spouse (or purported spouse) of a living individual shall be considered to be divorced from that individual within the meaning of this definition if, subsequent to his marriage (or purported

marriage) to that individual, the spouse (or purported spouse)—

- (1) Holds himself out as being divorced from, or not being married to, the individual;
- (2) Holds himself out as being married to another individual; or
- (3) Was a party to a ceremony purported by the parties thereto to be a marriage between the spouse (or purported spouse) and another individual.

Drugs or other substances means controlled substances within the meaning of the drug control and enforcement laws, at 21 U.S.C. 802(6).

Educational/academic institution means an institution whose primary purpose is educational or academic learning.

Eligible payee means—

- (1) A beneficiary described in the Act, at 42 U.S.C. 3796(a), with respect to a claim under subpart B of this part; or
- (2) A beneficiary described in the Act, at 42 U.S.C. 3796(b), with respect to a claim under subpart C of this part.

Emergency medical services means—

- (1) Provision of first-response emergency medical care (other than in a permanent medical-care facility); or
- (2) Transportation of persons in medical distress (or under emergency conditions) to medical-care facilities.

Employed by a public agency—A public safety officer is employed, within the meaning of the Act, at 42 U.S.C. 3796c–1 or Public Law 107–37, by a public agency, when he—

- (1) Is employed by the agency in a civilian capacity; and
- (2) Is—
 - (i) Serving the agency in an official capacity (with respect to officers of any kind but disaster relief workers); or
 - (ii) Performing official duties as described in the Act, at 42 U.S.C. 3796b(9)(B) or (C) (with respect to disaster relief workers).

Employee does not include—

- (1) Any independent contractor; or
- (2) Any individual who is not eligible to receive death or disability benefits from the purported employer on the same basis as a regular employee of such employer would.

Filing means any claim, request, motion, election, petition, or appeal, and

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any item or matter (*e.g.*, evidence, certifications, authorizations, waivers, legal arguments, or lists) that is, or may be, filed with the PSOB Office.

Fire protection means—

- (1) Suppression of fire;
- (2) Hazardous-materials emergency response; or
- (3) Emergency medical services or rescue activity of the kind performed by firefighters.

Fire, rescue, or police emergency includes disaster-relief emergency.

Firefighter means an individual who—

- (1) Is trained in—
 - (i) Suppression of fire; or
 - (ii) Hazardous-materials emergency response; and
- (2) Has the legal authority and responsibility to engage in the suppression of fire, as—
 - (i) An employee of the public agency he serves, which legally recognizes him to have such (or, at a minimum, does not deny (or has not denied) him to have such); or
 - (ii) An individual otherwise included within the definition provided in the Act, at 42 U.S.C. 3796b(4).

Functionally within or -part of—No individual shall be understood to be functionally within or -part of a public agency solely by virtue of an independent contractor relationship.

Gross negligence means great, heedless, wanton, indifferent, or reckless departure from ordinary care, prudence, diligence, or safe practice—

- (1) In the presence of serious risks that are known or obvious;
- (2) Under circumstances where it is highly likely that serious harm will follow; or
- (3) In situations where a high degree of danger is apparent.

Hazardous-materials emergency response means emergency response to the threatened or actual release of hazardous materials, where life, property, or the environment is at significant risk.

Heart attack means myocardial infarction or sudden cardiac arrest.

Illegitimate child—An individual is an illegitimate child of a public safety officer only if he is a natural child of the officer, and the officer is not married to the other biological parent at (or at

any time after) the time of his conception.

Incapable of self-support because of physical or mental disability—An individual is incapable of self-support because of physical or mental disability if he is under a disability within the meaning of the Social Security Act, at 42 U.S.C. 423(d)(1)(A), applicable *mutatis mutandis*.

Independent contractor includes any volunteer, servant, employee, contractor, or agent, of an independent contractor.

Injury means a traumatic physical wound (or a traumatized physical condition of the body) caused by external force (such as bullets, explosives, sharp instruments, blunt objects, or physical blows), chemicals, electricity, climatic conditions, infectious disease, radiation, virii, or bacteria, but does not include any occupational disease, or any condition of the body caused or occasioned by stress or strain.

Injury date means the time of the line of duty injury that—

- (1) Directly and proximately results in the public safety officer's death, with respect to a claim under—
 - (i) Subpart B of this part; or
 - (ii) Subpart D of this part, by virtue of his death; or
- (2) Directly (or directly and proximately) results in the public safety officer's total and permanent disability, with respect to a claim under—
 - (i) Subpart C of this part; or
 - (ii) Subpart D of this part, by virtue of his disability.

Instrumentality means entity, and does not include any individual, except that no entity shall be considered an instrumentality within the meaning of the Act, at 42 U.S.C. 3796b(8), or this part, unless, as of the injury date,

- (1) The entity—
 - (i) Is legally established, -recognized, or -organized, such that it has legal existence; and
 - (ii) Is so organized and controlled, and its affairs so conducted, that it operates and acts solely and exclusively as a functional part of the relevant government, which legally recognizes it as such (or, at a minimum, does not deny (or has not denied) it to be such); and
- (2) The entity's—

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(i) Functions and duties are solely and exclusively of a public character;

(ii) Services are provided generally to the public as such government would provide if acting directly through its public employees (*i.e.*, they are provided without regard to any particular relationship (such as a subscription) a member of the public may have with such entity); and

(iii) Acts and omissions are, and are recognized by such government as (or, at a minimum, not denied by such government to be), legally—

(A) Those of such government, for purposes of sovereign immunity; or

(B) The responsibility of such government, for purposes of tort liability.

Intention—A death, injury, or disability is brought about by a public safety officer's intention if—

(1) An intentional action or activity of his is a substantial factor in bringing it about; and

(2) It is a reasonably foreseeable result of the intentional action or activity.

Intentional action or activity means activity or action (other than line of duty activity or action), including behavior, that is—

(1) A result of conscious volition, or otherwise voluntary;

(2) Not a result of legal insanity or of impulse that is legally and objectively uncontrollable; and

(3) Not performed under legal duress or legal coercion of the will.

Intentional misconduct—Except with respect to voluntary intoxication at the time of death or catastrophic injury, a public safety officer's action or activity is intentional misconduct if—

(1) As of the date it is performed,

(i) Such action or activity—

(A) Is in violation of, or otherwise prohibited by, any statute, rule, regulation, condition of employment or service, official mutual-aid agreement, or other law; or

(B) Is contrary to the ordinary, usual, or customary practice of similarly-situated officers within the public agency in which he serves; and

(ii) He knows, or reasonably should know, that it is so in violation, prohibited, or contrary; and

(2) Such action or activity—

(i) Is intentional; and

(ii) Is—

(A) Performed without reasonable excuse; and

(B) Objectively unjustified.

Involvement—An individual is involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal laws (including juvenile delinquency), only if he is an officer of a public agency and, in that capacity, has legal authority and responsibility to arrest, apprehend, prosecute, adjudicate, correct or detain (in a prison or other detention or confinement facility), or supervise (as a parole or probation officer), persons who are alleged or found to have violated the criminal laws, and is recognized by such agency, or the relevant government (or, at a minimum, not denied by such agency, or the relevant government), to have such authority and responsibility.

Itemized description of representative services provided—A description of representative services provided is itemized only when it includes—

(1) The beginning and end dates of the provision of the services;

(2) An itemization of the services provided and the amount of time spent in providing them; and

(3) An itemization of the expenses incurred in connection with the services provided for which reimbursement is sought.

Kinds of public safety officers—The following are the different kinds of public safety officers:

(1) Law enforcement officers;

(2) Firefighters;

(3) Chaplains;

(4) Members of rescue squads or ambulance crews; and

(5) Disaster relief workers.

Law enforcement means enforcement of the criminal laws, including—

(1) Control or reduction of crime or of juvenile delinquency;

(2) Prosecution or adjudication of individuals who are alleged or found to have violated such laws;

(3) Corrections or detention (in a prison or other detention or confinement facility) of individuals who are alleged or found to have violated such laws; and

(4) Supervision of individuals on parole or probation for having violated such laws.

Line of duty activity or action—Activity or an action is performed in the line of duty, in the case of a public safety officer who is—

(1) A law enforcement officer, a firefighter, or a member of a rescue squad or ambulance crew—

(i) Whose primary function (as applicable) is law enforcement, fire protection, rescue activity, or the provision of emergency medical services, only if, not being described in the Act, at 42 U.S.C. 3796a(1), and not being a frolic or detour, it is activity or an action that he is obligated or authorized by statute, rule, regulation, condition of employment or service, official mutual-aid agreement, or other law, to perform (including any social, ceremonial, or athletic functions (or any training programs) to which he is assigned, or for which he is compensated), under the auspices of the public agency he serves, and such agency (or the relevant government) legally recognizes that activity or action to be so obligated or authorized (or, at a minimum, does not deny (or has not denied) it to be such); or

(ii) Whose primary function is not law enforcement, fire protection, rescue activity, or the provision of emergency medical services, only if, not being described in the Act, at 42 U.S.C. 3796a(1), and not being a frolic or detour—

(A) It is activity or an action that he is obligated or authorized by statute, rule, regulation, condition of employment or service, official mutual-aid agreement, or other law, to perform, under the auspices of the public agency he serves, and such agency (or the relevant government) legally recognizes that activity or action to be so obligated or authorized (or, at a minimum, does not deny (or has not denied) it to be such); and

(B) It is performed (as applicable) in the course of law enforcement, providing fire protection, engaging in rescue activity, providing emergency medical services, or training for one of the foregoing, and such agency (or the relevant government) legally recognizes it as such (or, at a minimum,

does not deny (or has not denied) it to be such);

(2) A disaster relief worker, only if, not being described in the Act, at 42 U.S.C. 3796a(1), and not being a frolic or detour, it is disaster relief activity, and the agency he serves (or the relevant government), being described in the Act, at 42 U.S.C. 3796b(9)(B) or (C), legally recognizes it as such (or, at a minimum, does not deny (or has not denied) it to be such); or

(3) A chaplain, only if, not being described in the Act, at 42 U.S.C. 3796a(1), and not being a frolic or detour—

(i) It is activity or an action that he is obligated or authorized by statute, rule, regulation, condition of employment or service, official mutual-aid agreement, or other law, to perform, under the auspices of the public agency he serves, and such agency (or the relevant government) legally recognizes it as such (or, at a minimum, does not deny (or has not denied) it to be such); and

(ii) It is performed in the course of responding to a fire, rescue, or police emergency, and such agency (or the relevant government) legally recognizes it as such (or, at a minimum, does not deny (or has not denied) it to be such).

Line of duty injury—An injury is sustained in the line of duty only if—

(1) It is sustained in the course of—

(i) Performance of line of duty activity or a line of duty action; or

(ii) Authorized commuting; or

(2) Convincing evidence demonstrates that such injury resulted from the injured party's status as a public safety officer.

Mental faculties means brain function.

Natural child—An individual is a natural child of a public safety officer only if he is a biological child of the officer, and the officer is alive at the time of his birth.

Occupational disease means a disease that routinely constitutes a special hazard in, or is commonly regarded as a concomitant of, an individual's occupation.

Official capacity—An individual serves a public agency in an official capacity only if—

(1) He is officially authorized, -recognized, or -designated (by such agency)

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as functionally within or -part of it; and

(2) His acts and omissions, while so serving, are legally those of such agency, which legally recognizes them as such (or, at a minimum, does not deny (or has not denied) them to be such).

Official duties means duties that are officially authorized, -recognized, or -designated by an employing entity, such that the performance of those duties is legally the action of such entity, which legally recognizes it as such (or, at a minimum, does not deny (or has not denied) it to be such).

Officially recognized or designated member of a department or agency means a member of a department or agency, or of an instrumentality, of a government described in the Act, at 42 U.S.C. 3796b(8), who is officially recognized (or officially designated) as such a member by the same.

Officially recognized or designated public employee of a department or agency means a public employee of a department or agency who is officially recognized (or officially designated) as a public safety officer, by the same.

Officially recognized or designated public employee member of a squad or crew means a public employee member of a squad or crew who is officially recognized (or officially designated) as such a public employee member, by the public agency under whose auspices the squad or crew operates.

OJP means the Office of Justice Programs, U.S. Department of Justice.

Parent means a father or a mother.

Parent-child relationship means a relationship between a public safety officer and another individual, in which the officer has the role of parent (other than biological or legally-adoptive), as shown by convincing evidence.

Performance of duties in a grossly negligent manner at the time of death or catastrophic injury means gross negligence, as of or near the injury date, in the course of authorized commuting or performance of line of duty activity or a line of duty action, where such negligence is a substantial contributing factor in bringing such death or injury about.

Posthumous child—An individual is a posthumous child of a public safety of-

ficer only if he is a biological child of the officer, and the officer is—

(1) Alive at the time of his conception; and

(2) Not alive at the time of his birth.

PSOB determining official means, as applicable, any of the following:

(1) The PSOB Office;

(2) The Hearing Officer; or

(3) The Director.

PSOB Office means the unit of BJA that directly administers the Public Safety Officers' Benefits program, except that, with respect to the making of any finding, determination, affirmation, reversal, assignment, authorization, decision, judgment, waiver, or other ruling, it means such unit, acting with the concurrence of OJP's General Counsel.

Public employee means—

(1) An employee of a government described in the Act, at 42 U.S.C. 3796b(8), (or of a department or agency thereof) and whose acts and omissions while so employed are legally those of such government, which legally recognizes them as such (or, at a minimum, does not deny (or has not denied) them to be such); or

(2) An employee of an instrumentality of a government described in the Act, at 42 U.S.C. 3796b(8), who is eligible to receive death or disability benefits from such government on the same basis as an employee of that government (within the meaning of paragraph (1) of this definition) would.

Public employee member of a squad or crew means a member of a squad or crew who is a public employee under the auspices of whose public agency employer the squad or crew operates.

Public employee of a department or agency means a public employee whose public agency employer is the department or agency.

Qualified beneficiary—An individual is a qualified beneficiary under the Act, at 42 U.S.C. 3796c-1 or Public Law 107-37, only if he is an eligible payee—

(1) Who qualifies as a beneficiary pursuant to a determination that—

(i) The requirements of the Act, at 42 U.S.C. 3796(a) or (b) (excluding the limitations relating to appropriations), as applicable, have been met; and

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(ii) The provisions of this part, as applicable, relating to payees otherwise have been met; and

(2) Whose actions were not a substantial contributing factor to the death of the public safety officer (with respect to a claim under subpart B of this part).

Representative services include expenses incurred in connection with such services.

Rescue activity means search or rescue assistance in locating or extracting from danger persons lost, missing, or in imminent danger of serious bodily harm.

Rescue squad or ambulance crew means a squad or crew whose members are rescue workers, ambulance drivers, paramedics, health-care responders, emergency medical technicians, or other similar workers, who—

(1) Are trained in rescue activity or the provision of emergency medical services; and

(2) As such members, have the legal authority and -responsibility to—

(i) Engage in rescue activity; or

(ii) Provide emergency medical services.

Spouse means an individual's lawful husband, -wife, -widower, or -widow (*i.e.*, with whom the individual lawfully entered into marriage), and includes a spouse living apart from the individual, other than pursuant to divorce, except that, notwithstanding any other provision of law—

(1) For an individual purporting to be a spouse on the basis of a common-law marriage (or a putative marriage) to be considered a spouse within the meaning of this definition, it is necessary (but not sufficient) for the jurisdiction of domicile of the parties to recognize such individual as the lawful spouse of the other; and

(2) In deciding who may be the spouse of a public safety officer—

(i) The relevant jurisdiction of domicile is the officer's (as of the injury date); and

(ii) With respect to a claim under subpart B of this part, the relevant date is that of the officer's death.

Stepchild—An individual is a stepchild of a public safety officer only if the individual is the legally-adoptive or biological first-generation offspring

of a public safety officer's current, deceased, or former spouse, which offspring (not having been legally adopted by the officer)—

(1) Was conceived before the marriage of the officer and the spouse; and

(2) As of the injury date—

(i) Was known by the officer not to be his biological first-generation offspring; and

(ii) After the officer obtained such knowledge—

(A) Received over half of his support from the officer;

(B) Had as his principal place of abode the home of the officer and was a member of the officer's household; or

(C) Was in a parent-child relationship with the officer.

Stress or strain includes physical stress or strain, mental stress or strain, post-traumatic stress disorder, and depression.

Stroke means cerebral vascular accident.

Student means an individual who meets the definition provided in the Act, at 42 U.S.C. 3796b(3)(ii), with respect to an educational/academic institution.

Substantial contributing factor—A factor substantially contributes to a death, injury, or disability, if the factor—

(1) Contributed to the death, injury, or disability to a significant degree; or

(2) Is a substantial factor in bringing the death, injury, or disability about.

Substantial factor—A factor substantially brings about a death, injury, disability, heart attack, or stroke if—

(1) The factor alone was sufficient to have caused the death, injury, disability, heart attack, or stroke; or

(2) No other factor (or combination of factors) contributed to the death, injury, disability, heart attack, or stroke to so great a degree as it did.

Suppression of fire means extinguishment, physical prevention, or containment of fire, including on-site hazard evaluation.

Terrorist attack—An event or act is a terrorist attack within the meaning of the Act, at 42 U.S.C. 3796c-1(a), only if the Attorney General determines that—

(1) There is a reasonable indication that the event or act was (or would be

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or would have been, with respect to a *priori* prevention or investigation efforts) an act of domestic or international terrorism within the meaning of the criminal terrorism laws, at 18 U.S.C. 2331; and

(2) The event or act (or the circumstances of death or injury) was of such extraordinary or cataclysmic character as to make particularized factual findings impossible, impractical, unnecessary, or unduly burdensome.

Voluntary intoxication at the time of death or catastrophic injury means the following:

(1) With respect to alcohol,

(i) In any claim arising from a public safety officer's death in which the death was simultaneous (or practically simultaneous) with the injury, it means intoxication as defined in the Act, at 42 U.S.C. 3796b(5), unless convincing evidence demonstrates that the officer did not introduce the alcohol into his body intentionally; and

(ii) In any claim not described in paragraph (1)(i) of this definition, unless convincing evidence demonstrates that the officer did not introduce the alcohol into his body intentionally, it means intoxication—

(A) As defined in the Act, at 42 U.S.C. 3796b(5), *mutatis mutandis* (i.e., with “post-mortem” (each place it occurs) and “death” being substituted, respectively, by “post-injury” and “injury”); and

(B) As of the injury date; and

(2) With respect to drugs or other substances, it means a disturbance of mental or physical faculties resulting from their introduction into the body of a public safety officer, as evidenced by the presence therein, as of the injury date—

(i) Of any controlled substance included on Schedule I of the drug control and enforcement laws (see 21 U.S.C. 812(a)), or any controlled substance included on Schedule II, III, IV, or V of such laws (see 21 U.S.C. 812(a)) and with respect to which there is no therapeutic range or maximum recommended dosage, unless convincing evidence demonstrates that such introduction was not a culpable act of the officer's under the criminal laws; or

(ii) Of any controlled substance included on Schedule II, III, IV, or V of the drug control and enforcement laws (see 21 U.S.C. 812(a)) and with respect to which there is a therapeutic range or maximum recommended dosage—

(A) At levels above or in excess of such range or dosage, unless convincing evidence demonstrates that such introduction was not a culpable act of the officer's under the criminal laws; or

(B) At levels at, below, or within such range or dosage, unless convincing evidence demonstrates that—

(1) Such introduction was not a culpable act of the officer's under the criminal laws; or

(2) The officer was not acting in an intoxicated manner immediately prior to the injury date.

§ 32.4 Terms; construction, severability.

(a) The first three provisions of 1 U.S.C. 1 (rules of construction) shall apply.

(b) If benefits are denied to any individual pursuant to the Act, at 42 U.S.C. 3796a(4), or otherwise because his actions were a substantial contributing factor to the death of the public safety officer, such individual shall be presumed irrebuttably, for all purposes, not to have survived the officer.

(c) Any provision of this part held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable herefrom and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

§ 32.5 Evidence.

(a) Except as otherwise may be expressly provided in the Act or this part, a claimant has the burden of persuasion as to all material issues of fact, and by the standard of proof of “more likely than not.”

(b) Except as otherwise may be expressly provided in this part, the PSOB