U.S. Department of Justice
Office of the Inspector General
Evaluation and Inspections Division

The Office of Justice Programs' Implementation of the Hometown Heroes Survivors Benefits Act of 2003

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EXECUTIVE DIGEST

INTRODUCTION

The Office of the Inspector General (OIG) conducted this review to examine how the Office of Justice Programs (OJP) has implemented the *Hometown Heroes Survivors Benefits Act of 2003* (Hometown Heroes Act) and how it processed claims submitted under the Act. The Act established death benefits for public safety officers, such as police officers and firefighters, who die of heart attacks or strokes in the line of duty or within 24 hours of a triggering event while on duty.[1] We assessed the timeliness of OJP's processing of claims filed under the Act, OJP's determination of whether or not to award benefits, and the reasoning behind these determinations. We conducted the review in response to concerns expressed by several members of Congress that OJP was taking too long to process claims submitted under the Act and that OJP's narrow interpretation of terms found in the Act – in particular the phrases "nonroutine stressful or strenuous physical activity" and "competent medical evidence to the contrary" – might be resulting in a high rate of claims denials.

The Hometown Heroes Act includes a statutory presumption that public safety officers who die from a heart attack or stroke following a "nonroutine stressful or strenuous" physical public safety activity or training exercise died in the line of duty. However, under the Act the statutory presumption that heart attacks or strokes following stressful or strenuous physical activity are line-of-duty-related deaths can be overcome with "competent medical evidence to the contrary." This means that an officer's pre-existing medical conditions that contribute to a heart attack or stroke may render the claim for benefits not compensable.

Hometown Heroes Act claims are processed through OJP's Bureau of Justice Assistance (BJA), which administers the Public Safety Officers' Benefits (PSOB) Program. The PSOB Office reviews the documentary

[1] Enacted on December 15, 2003, the Hometown Heroes Act amended the *Public Safety Officers' Benefits Act of 1976*, which had established a program to provide death and education benefits to spouses and children of public safety officers who die in the line of duty. Through an amendment in 1990, Congress also provided disability benefits to officers permanently and totally disabled by an injury incurred in the line of duty. See 42 U.S.C. § 3796.

evidence submitted by Hometown Heroes Act claimants and public safety agencies, contacts the claimants and agencies for additional documentation and information, and writes initial determinations to approve or deny claims.[2] OJP's Office of the General Counsel (OGC) is responsible for conducting a second review of Hometown Heroes Act claims and providing assessments of any legal issues. Both offices must concur in their evaluation of a claim before a final approval or denial can be issued to the claimant. From December 2003 through the end of November 2007, OJP received 291 Hometown Heroes Act claims and issued 112 determinations – 65 denials and 47 approvals, with $12,889,452 paid to claimants.[3]

RESULTS IN BRIEF

As of November 29, 2007, OJP had completed only half of the Hometown Heroes Act claims it received in the first 3 years after passage of the Act. Some of the claims that remained pending as of November 2007 had been filed as long ago as 2004. One of the reasons for the delay in processing claims was the fact that OJP took 33 months to issue final regulations implementing the Act, during which time OJP developed a backlog of 201 claims. However, even after OJP issued the necessary regulations in September 2006, it processed claims slowly. Processing was slow because most claims had been submitted without required documentation, OGC's legal reviews of claims were time consuming, and decisions on some claims were delayed because OJP could not obtain needed pathology reviews.

In the fall of 2007, OJP implemented several initiatives designed to expedite its processing of claims and by the end of our review had reduced the backlog of 201 claims to 99, for a total of 179 claims pending determination.

[2] Because the PSOB Program is a claims program, individuals must meet eligibility and evidentiary requirements to receive benefits. A claimant and the public safety agency involved in a claim are responsible for providing OJP with documentary evidence that demonstrates the claim meets the program's criteria and is compensable. OJP uses the term "determination" to mean the written decision that outlines the facts of the public safety officer's activities and death, a statement of whether the claim is approved or denied, and the reasoning for the decision.

[3] The amount of the one-time death benefit, currently $303,064, is determined by the date of the public safety officer's death. All approved claims are awarded the entire amount of the benefit. Since October 15, 1988, the benefit has been adjusted each year on October 1 to reflect the percentage of change in the Consumer Price Index.

We also found that OJP initially denied many claims because, according to OJP, evidence provided by the claimants did not prove that the decedents' activities, such as installing smoke detectors or manning a station house, were "stressful" or "strenuous" as required by the Act. Some denials were based in part on OJP's narrow legal interpretation of the definition of "nonroutine" activities. In October 2007, the BJA issued policy memoranda clarifying that any response to an emergency call should be considered "nonroutine" for purposes of analyzing claims under the Act. The Director of the PSOB Program Office stated that this step has since led to more claims being approved and faster claims processing.

The following sections of this Executive Summary describe in more detail the OIG's findings.

Timeliness of Claims Processing

OJP took a long time – from December 2003 to September 2006 – to update the PSOB Program regulations to implement the Hometown Heroes Act. During that time, OJP developed a backlog of 201 Hometown Heroes Act claims.

According to OJP, several factors affected its ability to update the program regulations, including the time it took to consult with public safety organizations and medical experts and the time required for Department of Justice and Office of Management and Budget reviews of the proposed regulations. OJP said it had to incorporate not only the Hometown Heroes Act into the PSOB Program regulations, but 18 other congressional amendments to the program and numerous court decisions made in the 30-year period since the original regulations were issued. During this almost 3-year period, no claims were processed because OJP could not make claim determinations until the final PSOB Program regulations were issued.

The final PSOB Program regulations became effective on September 11, 2006. As of that time, 201 claims were pending. However, we found that OJP's processing of claims was slow even after the regulations were in place. As of November 29, 2007, 179 Hometown Heroes Act claims were pending OJP's final determination, including 16 claims that had been pending for over 3 years. While the PSOB Office had taken some steps to prepare claims for processing during the time the regulations were being developed, these initial steps did not enable OJP to make timely determinations after the regulations were in place.

We examined how long it took OJP to process Hometown Heroes Act claims after regulations were issued and found that the processing times for the 112 claims completed by OJP ranged from 2 to 12 months, with a median processing time of 10 months. Overall, the 112 completed claims represented 38 percent of the 291 claims OJP received from passage of the Act in December 2003 through November 2007.

We found that three factors contributed to the length of time required to process claims after the regulations were issued. First, almost all of the claims were submitted without all required information and documentation. According to the PSOB Office staff, claimants often have difficulty preparing complete claims because of insufficient guidance, the time and expense of acquiring documentation, and in some cases limited assistance from the public safety agencies involved in the claims. As a result, the PSOB Office officials said they had to request additional information from claimants and agencies, which often added months to the process.

Second, the reviews of claims by OJP's OGC have been lengthy. We reviewed Hometown Heroes Act claims and the database that records activity on claims and estimated that OGC reviews took a median of 50 days, with some reviews taking more than 180 days. The length of the review was extended because of certain inefficient internal practices by the OGC, such as allocating PSOB claims across numerous attorneys and sometimes requesting additional documentation and evidence that was not necessary for making a determination on whether a claim was compensable. Additionally, because OGC has no formal method of recording information requests in the case files, the PSOB Office received duplicative information requests from OGC attorneys. Further, OGC attorneys made numerous inconsistent edits to the draft determinations, adding time to the claims review process. Finally, we noted that OGC had no established timeliness standards for conducting its reviews of the claims.

Third, some Hometown Heroes Act claim determinations were delayed pending the independent medical pathology review required for claims that OJP determined had met all other PSOB Program requirements. Initially, the Armed Forces Institute of Pathology (AFIP) provided these reviews, but in May 2007 the AFIP informed OJP that it could not continue doing so because the war in Iraq increased its

workload from the military services.[4] Consequently, processing for some claims was delayed until OJP identified a new pathology contractor.

OJP Initiatives to Improve the Claims Review Process

Toward the end of our review, the BJA and OJP's OGC implemented several initiatives to address some of the deficiencies that have contributed to the lengthy claims review process. These initiatives included providing additional guidance to claimants and changing internal procedures to speed the claims review process. During fiscal year (FY) 2007, OJP's first year of processing claims after the final regulations were issued, OJP issued 72 determinations. In contrast, during the first 2 months of FY 2008, OJP issued 40 determinations. The increased number of determinations issued suggests that some of the new policies and procedures have improved claims processing.[5] These initiatives are discussed below.

Better Guidance for Claimants and Agencies

The BJA, with input from public safety officer associations, is developing a manual about the Hometown Heroes Act for claimants and public safety agencies ("The Attorney General's Guide to the Hometown Heroes Act"). According to the PSOB Director, the manual will consolidate all claim application instructions in a single document that contains detailed information on the Hometown Heroes Act and the criteria used to evaluate claims. Additionally, the manual will translate the legal language of the statute and program regulations into more understandable terms.

[4] The AFIP is an agency of the Department of Defense that provides pathology services to the federal government and pathology consultation, education, and research. The AFIP has a workforce of over 820 personnel, including over 120 pathologists and other scientists.

[5] We could not fully determine the initiatives' effects on the process because they were implemented near the conclusion of our field work. However, OJP provided the OIG with an update to the numbers of Hometown Heroes Act claims processed and pending in an e-mail in March 2008. As of March 26, 2008, OJP had received a total of 303 claims, of which 213 had been decided, 1 had been withdrawn by the claimant, and 89 were pending a determination. OJP had approved 122 claims and denied 91 claims, 8 of which were overturned on appeal to approvals. The backlog of claims OJP developed during the time the program regulations were developed was reduced from 201 to 27.

Local Assistance State Teams

In 2006, the BJA began awarding grants to firefighter and police associations to develop the Local Assistance State Teams. The teams are deployed when a firefighter or police officer dies in the line of duty to aid the decedent's family, the public safety agency, and colleagues with assistance with funeral arrangements, counseling, and submitting PSOB claims.

New Approach to Required Documentation

In October 2007, the BJA stopped requesting 10 years of medical records from Hometown Heroes Act claimants unless evidence in a case file suggests something other than a line-of-duty activity caused the decedent's heart attack or stroke. This change will reduce the time spent requesting and waiting for records. Also, OJP no longer requests documentation on death benefits from claimants in states and localities that do not offer death benefits for heart attacks and strokes.

"12-a-Week" Initiative

The PSOB Director started a "12-a-week" initiative in August 2007 to work through the pending Hometown Heroes Act claims and to accelerate the claims process overall. Under the initiative, the PSOB Office staff and the Director meet weekly to determine whether case files for the 12 oldest Hometown Heroes Act claims include all the documentation necessary to make a decision and then forward those claims to OJP OGC for a legal review. According to the PSOB Director, processing is not delayed if a case file lacks documents or information that is not material to the approval or denial of a claim.

Outreach Administrative Contractor

In September 2007, the PSOB Director hired an Outreach Administrative Contractor to handle some of the most time-consuming tasks associated with PSOB claims processing, such as contacting claimants and public safety agencies for additional information and documents. According to the PSOB Director, the contractor's performance of the outreach tasks should allow the PSOB Office staff to concentrate on analyzing case file evidence and rendering determinations.

PSOB Case Management System

In October 2007, the PSOB Office began the first phase of implementing a new case management system. The PSOB Office's previous database did not allow for detailed searches of case file information, reminders for follow-up actions, or a direct link to scanned documents that accompany claims. Unlike the old database, the new system allows OGC attorneys reviewing PSOB claims access to view entire case files in the system and to add their review notes for the PSOB Office staff.

OJP's Decisions on Hometown Heroes Act Claims

As of November 29, 2007, OJP had approved 47 claims for benefits and denied 65 of the 112 claim reviews that it had completed.[6] In 10 of the 65 denied claims, OJP determined that the application did not contain the evidence to show that the claim met basic eligibility criteria established in the PSOB Act or the Hometown Heroes Act (such as that the decedent be a public safety officer, be on duty in the 24 hours prior to death, or have performed line-of-duty activities). Therefore, OJP did not further evaluate the 10 claims for evidence of "nonroutine stressful or strenuous" physical activity or "competent medical evidence to the contrary."

In assessing the 55 other denied claims, OJP reviewed the claims against the Act's requirement that the fatal heart attack or stroke followed "nonroutine stressful or strenuous" physical public safety activities or training exercises. In our review of these claim determinations, we observed that OJP focused more on the stressful and strenuous nature of the physical activities or training exercises in which decedents had engaged and less on how frequently or routinely the activities were conducted.[7]

[6] Claimants may appeal denied claims through a three-tiered process: OJP Hearing Officers, the BJA Director, and the federal courts. During the appeals process, claimants may present additional documentation and have witnesses testify on their behalf. See Appendix III for a description of the appeals process.

[7] To be considered "stressful" the physical activity must pose or appear to pose "significant threats or hazards" or involve "reasonably foreseeable risks of such threats or hazards" and provoke or cause "an unusually-high level of alarm, fear, or anxiety." To be considered "strenuous," the activity must "entail a high level of physical exertion." See 42 U.S.C. § 3796 (2006).

OJP concluded that these 55 claims were non-compensable because the evidence did not show that the public safety officers engaged in "stressful or strenuous physical activity or training." None of the 55 denied Hometown Heroes Act claims cited "medical evidence to the contrary" as a basis for denial. However, our review concluded that OJP narrowly interpreted the Act for at least 19 of the claims denied during its first year of claims processing. Specifically, OJP denied 19 claims in which officers had responded to emergency calls based partly on a criterion that was later changed by a policy memorandum issued in October 2007. After October 2, 2007, OJP changed its policy to consider any response to an emergency call to be "nonroutine." The PSOB Director attributed the subsequent approval of some claims to the policy change.

The reasons for the 65 denials, taken from information in the claim determinations, are summarized below.

OJP's Reasons for Denying Claims

Cases That Did Not Meet the Basic Criteria of the Act

Of the 65 denials, 10 were cases in which OJP concluded that the applications failed to show that the claims met the basic criteria established in the PSOB Act or the Hometown Heroes Act. Five of these claims failed to show evidence that the decedent was a public safety officer, four failed to show evidence that the officer was on duty in the 24 hours prior to the heart attack or stroke, and one failed to show evidence that the death met the requirements for "line of duty."[8]

[8] The PSOB Program defines "line of duty" activity as an "activity or an action that [the public safety officer] 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 . . . . [The activity] 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." See 28 C.F.R. § 32.3 (2006).

Cases Involving Officers Who Did Not Respond to a Call

Another 27 of the 65 denied claims involved officers who were on duty but did not respond to a call and did not engage in a qualifying activity as required by the Hometown Heroes Act.[9] The officers in several of these 27 claims had engaged only in administrative activities, such as filling out paperwork or attending meetings, or ancillary activities, such as routine maintenance on department vehicles, marching in a parade as a member of the department, installing smoke detectors for citizens, or manning the station house. OJP denied other claims in this category because it concluded that the officers' activities, while not administrative or ancillary, nonetheless did not involve "non routine stressful and strenuous physical activity" as required by the regulations. Examples of activities in these claims include correctional officers who made rounds and assisted in food service but did not respond to an emergency and officers who conducted regular patrols or routine traffic stops.

Cases Involving Officers Participating in Training

Nine of the 65 denied claims involved public safety officers who died after training activities that did not meet criteria in the Hometown Heroes Act. Some of these officers attended training sessions in a classroom that did not involve physical activity or had died while engaging in physical fitness training (such as lifting weights or walking on a treadmill) that did not simulate an emergency response activity. In other cases, OJP denied claims because an officer prepared the training or observed participants in a training session but did not engage in any training activities.

Cases Involving Officers Who Responded to a Call: Potentially Narrow Interpretation of the Act

In 19 of the 65 denied claims, OJP concluded that a public safety officer had suffered a heart attack or stroke after responding to a call but before arriving at the scene, after responding to a call that was a false alarm, after responding to a call and not conducting any law enforcement or emergency activities at the scene, or after responding to a call and not performing any activity that involved great physical exertion at the scene. However, OJP evaluated these claims using a narrow interpretation of

[9] Qualifying activities include law enforcement, fire suppression, rescue activity, hazardous material response, emergency medical services, disaster relief activity, or other emergency response. See 42 U.S.C. § 3796 (k)(1)(A) (2006).

the Act. OJP determined that the claims did not have enough evidence to show that the officer's response to the emergency call involved "nonroutine stressful or strenuous physical activity" or that the officers' activities after responding to the call qualified as "law enforcement, fire suppression, rescue, hazardous material response, emergency medical services, prison security, disaster relief or other emergency response activity."[10] Responses to emergency calls were not automatically defined as "nonroutine," and OJP evaluated the evidence in each claim to determine if the officers' emergency response activities met the requirements of the Hometown Heroes Act and PSOB Program regulations.

However, in October 2007, the BJA issued a policy memorandum that stated that any response to an emergency call should be considered "nonroutine" for purposes of analyzing claims eligibility.[11] The memorandum also stated that claims were to be reviewed based more on how stressful or strenuous an activity was and less on the frequency with which it was performed. Further, the revised policy stated that no activity was to be considered routine based solely on the public safety agency's description of the activity as being "routine" or "ordinary." The PSOB Director told us that the policy was instituted as a result of the experience gained after a year of processing Hometown Heroes Act claims. These 19 denied claims were decided prior to issuance of the October 2007 memorandum.

The PSOB Director told us that she intended to call each claimant whose Hometown Heroes Act claim had been denied prior to November 1, 2007, and whose claim was not already in the appeals process, to inform them of the new policy. In addition, OJP said it will waive its standard deadline for filing appeals to accommodate these claimants if they choose to appeal the initial decision.

According to the PSOB Director, the change in policy defining a response to an emergency call as "nonroutine" has resulted in more approved claims. Prior to the October 2007 policy clarification, OJP denied 58 of 72 claims and approved only 14; during the first 2 months

[10] 42 U.S.C. § 3796 (2006).

[11] OJP OGC considers this policy direction a "rebuttable presumption." Domingo Herraiz, Director, Bureau of Justice Assistance, Public Safety Officers' Benefits Program Policy Memorandum, re: "Nonroutine Stressful or Strenuous Physical Activity," October 2, 2007.

of FY 2008 (after the policy change), OJP issued another 40 determinations, approving 33 claims and denying only 7.[12]

CONCLUSION AND RECOMMENDATIONS

OJP took 33 months after passage of the Hometown Heroes Act to develop implementing regulations and initially was slow in processing claims. As a result, OJP had completed only 112 (38 percent) of the 291 Hometown Heroes Act claims it had received as of November 29, 2007. In addition, OJP's first year of processing claims under the Act highlighted several inefficiencies in the review process. These included lengthy legal reviews of claims and multiple requests for additional documents by OJP OGC, no established timeframes for attorney reviews, no formal method of recording attorneys' requests for information, incomplete claims submissions, and delayed pathology reviews that prevented timely assessments of claims.

In the fall of 2007, the BJA implemented new policies and actions designed to expedite the claims review process, and early evidence suggests that processing times have improved. For example, while OJP issued determinations on 72 Hometown Heroes Act claims in all of FY 2007, in the first 2 months of FY 2008 it issued determinations on 40 claims.

Our review of OJP's completed claim determinations showed that OJP initially denied most claims based on an evaluation of the stressful and strenuous nature of the physical activity or training exercise. While many of the denials met the intent of the Hometown Heroes Act, in some cases OJP used a narrow definition of what qualified as "nonroutine" for evaluating and denying the claims. In October 2007, OJP issued a policy change that implemented a broader definition that considers all emergency calls as "nonroutine." Since this policy change, more claims

[12] Our review of the claims determinations indicated that the increase in approvals after October 2007 may not be solely attributable to the policy change. Only 8 of the 33 approved claims (and none of the 7 denied claims) involved officers responding to a call that had similar circumstances to the 19 denied claims mentioned above. These eight approved claims involved officers who suffered a heart attack or stroke before arriving at the scene, after responding to a false alarm, or after arriving on the scene and not conducting any activities. The remaining 25 approved claims had evidence showing that the public safety officer engaged in law enforcement, fire suppression, rescue, hazardous material response, emergency medical services, prison security, disaster relief, or other emergency response activities that were considered "nonroutine stressful or strenuous" and were not based on the broader application of the definition in the October 2007 memorandum.

have been approved, and OJP has notified claimants of the changed standards to allow them to appeal their denials.

To further improve management of the Hometown Heroes Act claims process, we recommend that the BJA and OJP OGC take the following actions:

1. The BJA should finalize and issue the "Attorney General's Guide to the Hometown Heroes Act."

2. OJP OGC staff attorneys should be required to use the PSOB Office's new case management system to record their case notes, requests for documentation, and other case-related communications with the PSOB Office.

3. OJP OGC should establish definitive performance timelines for attorneys' reviews of PSOB claims to facilitate claims processing.

TABLE OF CONTENTS

ACRONYMS

AFIP	Armed Forces Institute of Pathology
BJA	Bureau of Justice Assistance
EMT	Emergency medical technician
FEMA	Federal Emergency Management Agency
FY	Fiscal year
LAST	Local Assistance State Teams
OGC	Office of the General Counsel
OIG	Office of the Inspector General
OJP	Office of Justice Programs
OMB	Office of Management and Budget
PSOB	Public Safety Officers' Benefits

BACKGROUND

The Department of Justice (Department) Office of Justice Programs (OJP) administers the Public Safety Officers' Benefits (PSOB) Program through its Bureau of Justice Assistance (BJA). At the request of several members of Congress, the Office of the Inspector General (OIG) examined the processing of death claims submitted under the PSOB Program for officers who died of heart attacks and strokes. Based on complaints from claimants, the members of Congress expressed concern to the OIG that OJP's interpretation and application of some program criteria were resulting in a high rate of claims denials.[13] In addition, the members raised concerns that OJP's processing of claims was not timely.

Public Safety Officers' Benefits Program

In 1976, Congress passed the *Public Safety Officers' Benefits Act* creating the PSOB Program to provide death and education benefits to spouses and children of public safety officers who die in the line of duty. In 1990, the PSOB Act was amended to provide disability benefits to officers permanently and totally disabled by an injury incurred in the line of duty. Public safety officers are defined as:

- state, local, or federal law enforcement officers;
- state, local, or federal firefighters;
- rescue squad and ambulance crew members;
- chaplains; and
- employees of the Federal Emergency Management Agency (FEMA) and employees of state, local, and tribal emergency management and civil defense agencies who work in cooperation with FEMA when performing official, hazardous duties related to a declared major disaster or emergency.

Hometown Heroes Survivors Benefits Act of 2003

The PSOB Program allowed a one-time payment of benefits for deaths involving traumatic injuries caused by an external force, but not for deaths caused by heart attacks or strokes that resulted from line-of-duty activities. To make benefits available to the survivors of public safety officers that die from heart attacks and strokes, Congress enacted

[13] The criteria were "nonroutine stressful and strenuous physical activity" and "competent medical evidence to the contrary."

the *Hometown Heroes Survivors Benefits Act* (Hometown Heroes Act) in December 2003.[14] This Act amended the PSOB Act to include benefits for the survivors of public safety officers who die of heart attacks or strokes in the line of duty or within 24 hours of a triggering effect while on duty. The Hometown Heroes Act included a statutory presumption that public safety officers who die from a heart attack or stroke following a "nonroutine stressful or strenuous" physical public safety activity or training died in the line of duty for the program's purposes. However, under the Act, the statutory presumption that heart attacks or strokes following stressful or strenuous physical activity are line-of-duty-related deaths can be overcome with "competent medical evidence to the contrary." This means that an officer's pre-existing medical conditions that contribute to a heart attack or stroke may render the claim for benefits not compensable.

To be eligible for PSOB Program benefits under the Hometown Heroes Act, claimants must provide evidence that all of the following requirements are met:

- The decedent was a public safety officer.
- The public safety officer died as the direct and proximate result of a heart attack or stroke.
- While on duty, the public safety officer either (1) engaged in line-of-duty activity that included law enforcement, fire suppression, rescue activity, hazardous material response, emergency medical services, disaster relief activity, or other emergency response activity or (2) participated in a formal training exercise.
- The line-of-duty activity or participation in a formal training exercise involved nonroutine stressful physical activity or nonroutine strenuous physical activity.
- The heart attack or stroke occurred while the public safety officer was engaging in this activity, or participating in this training, or within 24 hours after this activity.[15]

[14] See Appendix I for the text of the *Hometown Heroes Survivors Benefits Act of 2003.*

[15] 42 U.S.C. § 3796 (2006).

PSOB Program Regulations

In January 2004, OJP began updating the PSOB regulations to incorporate not only the provisions of the Hometown Heroes Act passed the preceding month, but also 18 other congressional amendments to the program and numerous court decisions over a 30-year period. The updated PSOB Program regulations took effect on September 11, 2006.

OJP's Definition of Terms From the Hometown Heroes Act

The Hometown Heroes Act used the terms "nonroutine stressful or strenuous" physical activity and "competent medical evidence to the contrary" as criteria for determining whether PSOB claims would be eligible for compensation. OJP defined these terms in developing the PSOB Program implementing regulations. The OJP General Counsel, the primary author of the updated regulations, said he used language from the Hometown Heroes and the PSOB Acts, comments from members of Congress in committee hearings, input from public meetings, and consultations with experts in the public safety and medical fields to develop definitions for these terms. We summarize below the information used by the General Counsel to define the terms.

Nonroutine Stressful and Strenuous Physical Activity

The Hometown Heroes Act states that benefits are available only if heart attacks and strokes occurred under certain circumstances. While the Hometown Heroes bill was under consideration, members of Congress narrowed the criteria for receiving compensation. For example, on November 21, 2003, House Judiciary Committee Chairman Sensenbrenner stated that the legislation as originally proposed:

> [W]as to cover officers who suffered a heart attack or stroke as a result of nonroutine stressful or strenuous physical activity; however, testimony [by public safety officials] . . . indicated that the legislation as drafted was overboard . . . it would cover officers who did not engage in any physical activity but merely happened to suffer a heart attack at work.[16]

[16] Cong. Rec., H12299 – H12300 (daily ed. Nov. 21, 2003) (statement of Rep. Sensenbrenner). Testimony by public safety officials at a hearing conducted by the U.S. House of Representatives Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security: Hometown Heroes Survivors Benefits Act, H.R. 919, 108th Cong, 1st sess., June 26, 2003.

According to Chairman Sensenbrenner, amendments to the bill were proposed, and eventually adopted, to address this concern and create a presumption that:

> [A]n officer who died as a direct and proximate result of a heart attack or stroke died as a direct and proximate result of a personal injury sustained in the line of duty if: (1) that officer participated in a training exercise that involved nonroutine stressful or strenuous physical activity or responded to a situation and such participation or response involved nonroutine stressful or strenuous physical law enforcement, hazardous material response, emergency medical services, prison security, fire suppression, rescue, disaster relief or other emergency response activity; (2) that officer suffered a heart attack or stroke while engaging or within 24 hours of engaging in that physical activity; and (3) such presumption cannot be overcome by competent medical evidence.[17]

The amendments excluded activities of a "clerical, administrative, or non-manual nature" and listed examples:

- sitting at a desk;
- typing on a computer or talking on the telephone;
- reading or writing paperwork or other literature;
- watching a police or corrections facility's monitors of cells or grounds;
- teaching a class;
- cleaning or organizing an emergency response vehicle;
- signing a prisoner in or out;
- driving a vehicle on routine patrol; and
- directing traffic at or participating in a local parade.[18]

Committee Chairman Sensenbrenner further stated that, for the purposes of the Hometown Heroes Act, "nonroutine stressful or strenuous physical activities" included:

- involvement in a physical struggle with a suspected or convicted criminal;
- performing a search and rescue mission;
- performing or assisting with emergency medical treatment;
- performing or assisting with fire suppression;
- involvement in a situation that requires either a high-speed response or pursuit on foot or in a vehicle;
- participation in a hazardous material response;
- responding to a riot that broke out at a public event; and

[17] Cong. Rec., H12299 – H12300 (daily ed. Nov. 21, 2003) (statement of Rep. Sensenbrenner).

[18] Cong. Rec., H12299 – H12300 (daily ed. Nov. 21, 2003) (statement of Rep. Sensenbrenner).

- physically engaging in the arrest or apprehension of a suspected criminal.[19]

The amendments and examples listed above subsequently were incorporated into the Hometown Heroes Act that was passed by both Houses and signed into law. According to the General Counsel, OJP used the list of examples of ineligible activities provided by Congress in comments as guidance for devising the PSOB Program regulations and claims review process.

In the final regulations for the PSOB Program, OJP defined the term "nonroutine stressful or strenuous physical activity" as:

- *Nonroutine stressful physical activity* means activity that is not performed as a matter of routine (routine means that the level of stress is routine and not simply that the activity itself is performed with some regularity) and entails non-negligible physical exertion.
    - For line-of-duty activity, it means activity that poses or appears to pose significant threats or hazards or involves reasonably foreseeable risks of such threats or hazards and provokes or causes an unusually high level of alarm, fear, or anxiety.
    - For training exercises, it means training that realistically simulates significant threats or hazards and provokes or causes an unusually high level of alarm, fear, or anxiety.
- *Nonroutine strenuous physical activity* means activity that is not performed as a matter of routine (routine means that the level of physical exertion is routine and not simply that the activity itself is performed with some regularity) and entails an unusually high level of physical exertion.[20]

[19] Cong. Rec., H12299 – H12300 (daily ed. Nov. 21, 2003) (statement of Rep. Sensenbrenner).

[20] 28 C.F.R. § 32.13 (2006).

- *Nonroutine stressful or strenuous physical activity* specifically does not include actions of a "clerical, administrative, or nonmanual nature."[21]

Competent Medical Evidence to the Contrary

Another term OJP defined was "medical evidence to the contrary." Under the Act, "medical evidence to the contrary" could override the presumption that a death from stroke or heart attack occurring within 24 hours of non-routine stressful activities was caused by line-of-duty activities. OJP's General Counsel said he consulted with the Armed Forces Medical Examiner from the Armed Forces Institute of Pathology (AFIP) to help define the term and develop the criteria OJP would use to determine if "competent medical evidence to the contrary" was present that could exclude a claimant from receiving benefits.[22] According to the General Counsel, the goal was to craft a definition that would be medically sound yet usable in the PSOB claims determination process.[23]

After consulting with the AFIP, OJP included in the proposed regulations several criteria with enumerated risk factors that would help it determine if factors other than the physical activity engaged in in the line of duty (for example, coronary heart disease or obesity) caused the heart attack or stroke. OJP received comments on the proposed regulations objecting to the inclusion of such criteria in the proposed regulations. These comments led OJP to replace its proposed risk-based criteria in the final PSOB regulations with an approach that considers whether the decedent had taken the necessary steps to treat known medical conditions that may lead to a heart attack or stroke, such as by taking medications for high blood pressure or high cholesterol. The AFIP advised OJP that a pathologist would need 10 years of medical records to provide a complete picture of a person's medical history and actions taken to address medical issues related to heart attacks or strokes.

[21] 42 U.S.C. § 3796 (2006).

[22] The AFIP is an agency of the Department of Defense that provides pathology consultation, education, and research to the federal government. The AFIP has over 820 employees, including over 120 pathologists and other scientists.

[23] OJP uses the term "determination" to mean the written decision that outlines the facts of the public safety officer's activities and death, a statement of whether the claim is approved or denied, and the reasoning for the decision.

PSOB Claims Process

Submitting a PSOB Claim Under the Hometown Heroes Act

The PSOB Program is a claims program with eligibility and evidentiary requirements for establishing entitlement to benefits. The Hometown Heroes Act includes the same evidentiary requirements for heart attacks and strokes as for traumatic injury deaths (such as shooting deaths or asphyxiations in a fire). Moreover, it requires additional documentation to prove that the officer engaged in non-routine stressful or strenuous physical activity or training that directly or proximately caused the heart attack or stroke. Under the PSOB Act, the claimant is responsible for providing OJP with evidence that demonstrates that the claim meets the criteria of the program and is compensable.

Claimants apply for PSOB Program compensation by filling out a claim application form (see Appendix II for claim forms) and working with the public safety agency in which the officer served to obtain other required documentation and evidence. The claimant, independently or through the public safety agency, submits the following supporting documentation for a death claim under the Hometown Heroes Act:

- PSOB Report of Public Safety Officer's Death form completed and signed by the head of the public safety agency;
- detailed statement of circumstances from the initiation of the incident to the pronouncement of the officer's death;
- investigation, incident, or accident reports;
- death certificate;
- autopsy report or a statement signed by the head of the public safety agency or the medical examiner explaining that no autopsy was performed;
- toxicology report or a statement signed by the head of the public safety agency or the medical examiner explaining that no analysis was performed;
- a detailed statement listing all of the officer's on-duty actions during the 24-hour period prior to the onset of the heart attack or stroke; and
- 10 years of medical records related to the officer's health (optional).

The claimant also is required to submit information about beneficiaries so that, if the claim is approved, OJP can determine who should receive compensation.[24] The following documents are requested from the claimant to assist OJP in establishing beneficiaries:

- current marriage certificate;
- divorce decrees for all the officer's and current spouse's previous marriages, including references to physical custody of children;
- death certificates for all the officer's and current spouse's previous marriages if ending in death;
- birth certificates for all of the officer's surviving children, regardless of age or dependency; and
- for each stepchild, a statement of a parent-child relationship.

Claimants can submit claim applications and any accompanying documents to the PSOB Office by mail, facsimile, or online through the BJA website.

Processing PSOB Claims

The BJA's PSOB Office receives PSOB death, disability, and education assistance claim applications; ensures claims are complete (which includes reviewing the documents submitted by the claimant and public safety agency and contacting claimants for additional documentation and information); and makes initial determinations of whether claims are compensable and should be approved. The PSOB Office then sends the claim applications and draft determinations to OJP OGC, which conducts a second review to identify any legal issues. Both the BJA and OJP OGC must concur on the claim determination based on the evidence submitted by a claimant and the public safety agency.[25]

[24] The PSOB Program beneficiary hierarchy is: (1) a surviving spouse or eligible children, if no surviving spouse or eligible children then, (2) the individual designated as beneficiary by the public safety officer at their agency or organization, (3) the individual designated as the beneficiary on the most recently executed life insurance policy, and (4) if the officer has no beneficiary listed on an insurance policy, the surviving parents. See 42 U.S.C. § 3796(a)(4).

[25] OJP Instruction I 1310.72B, Redelegation of Authority to the Head of the Public Safety Officers' Benefits Program (PSOB), April 4, 2001.

If a claim is approved, the PSOB Office sends a letter notifying the claimant and simultaneously submits a request for payment to the U.S. Department of the Treasury. If a claim is denied, the PSOB Office sends a notification to the claimant that includes the reasons for the denial and information on the appeals process. Claimants can appeal denied PSOB claims through three levels: Hearing Officers, the BJA Director, and the federal courts. During a hearing, the claimant has the opportunity to present new or additional evidence and call witnesses. See Appendix III for a description of the appeals process.

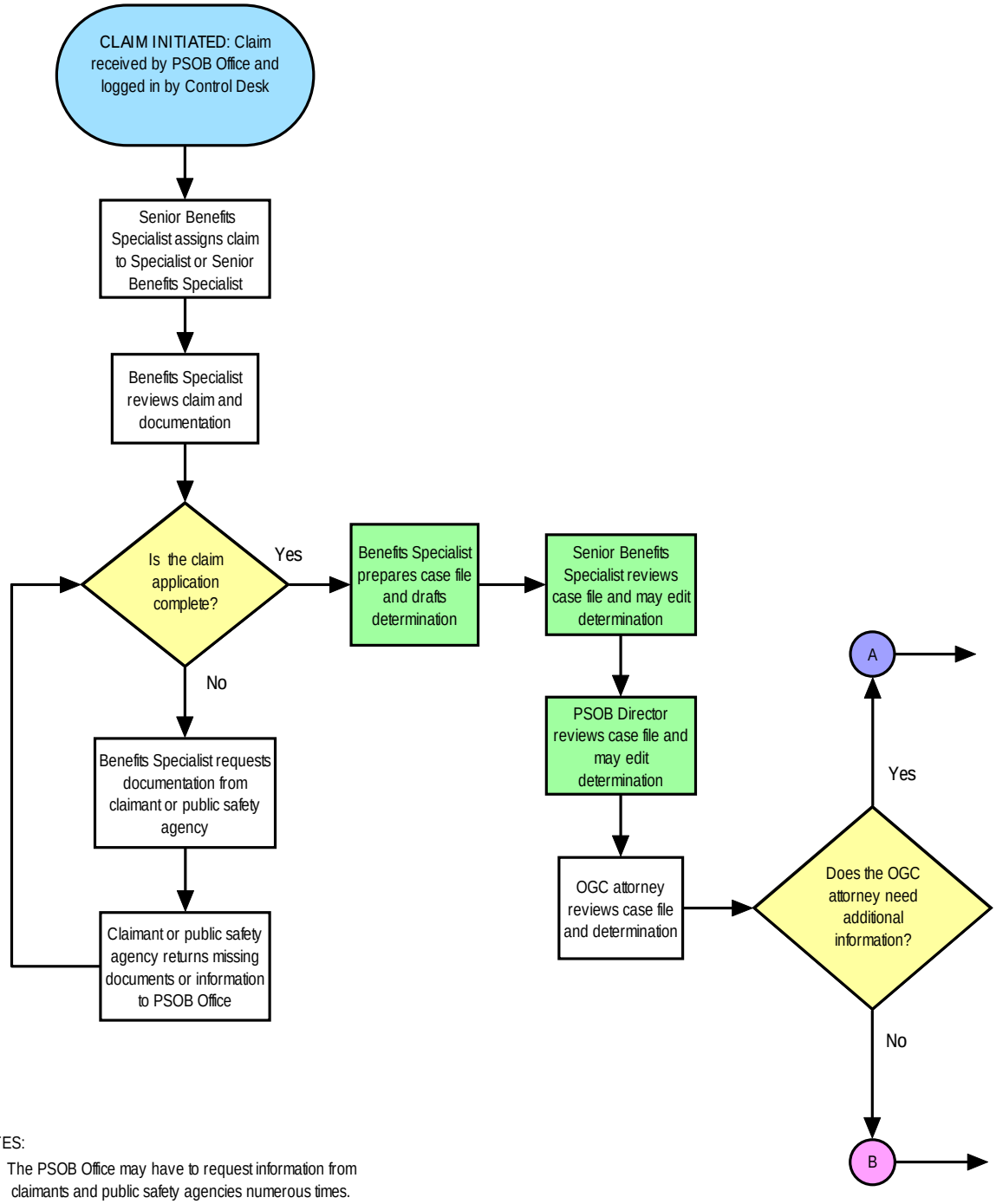
From December 2003 to November 29, 2007, the PSOB Office received a total of 291 PSOB death claims submitted under the Hometown Heroes Act.[26] The PSOB Office issued the first determination for a Hometown Heroes Act claim on December 6, 2006, and as of November 29, 2007, had made decisions on 112 claims (65 denials and 47 approvals), paying out $12,889,452. The amount of the one-time death benefit, currently $303,064, is determined by the date of the public safety officer's death.[27] Appendix IV presents demographic information from the completed Hometown Heroes Act claims.

Figure 1 on the next page shows the PSOB claims review process and Appendix V outlines the staffing, positions, and duties of each office working on the PSOB Program.

[26] The BJA received a total of 299 PSOB death claims submitted under the Hometown Heroes Act, but 6 claims were for deaths that were determined not to be heart attacks or strokes and therefore not eligible under the Act, 1 claim did not have evidence that the cause of death was a heart attack or stroke, and 1 claim was withdrawn before final processing. All eight of those claims were received prior to the effective date of the final PSOB Program regulations on September 11, 2006, and were not included in the data analysis for this report. Additionally, the BJA does not count claims that were denied because the decedent was not a public safety officer in the totals for PSOB death claims submitted under the Hometown Heroes Act. We included those claims in our analysis because the BJA processed them like other Hometown Heroes Act claims.

[27] All approved claims are awarded the entire amount of the benefit. Since October 15, 1988, the benefit has been adjusted each year on October 1 to reflect the percentage of change in the Consumer Price Index.

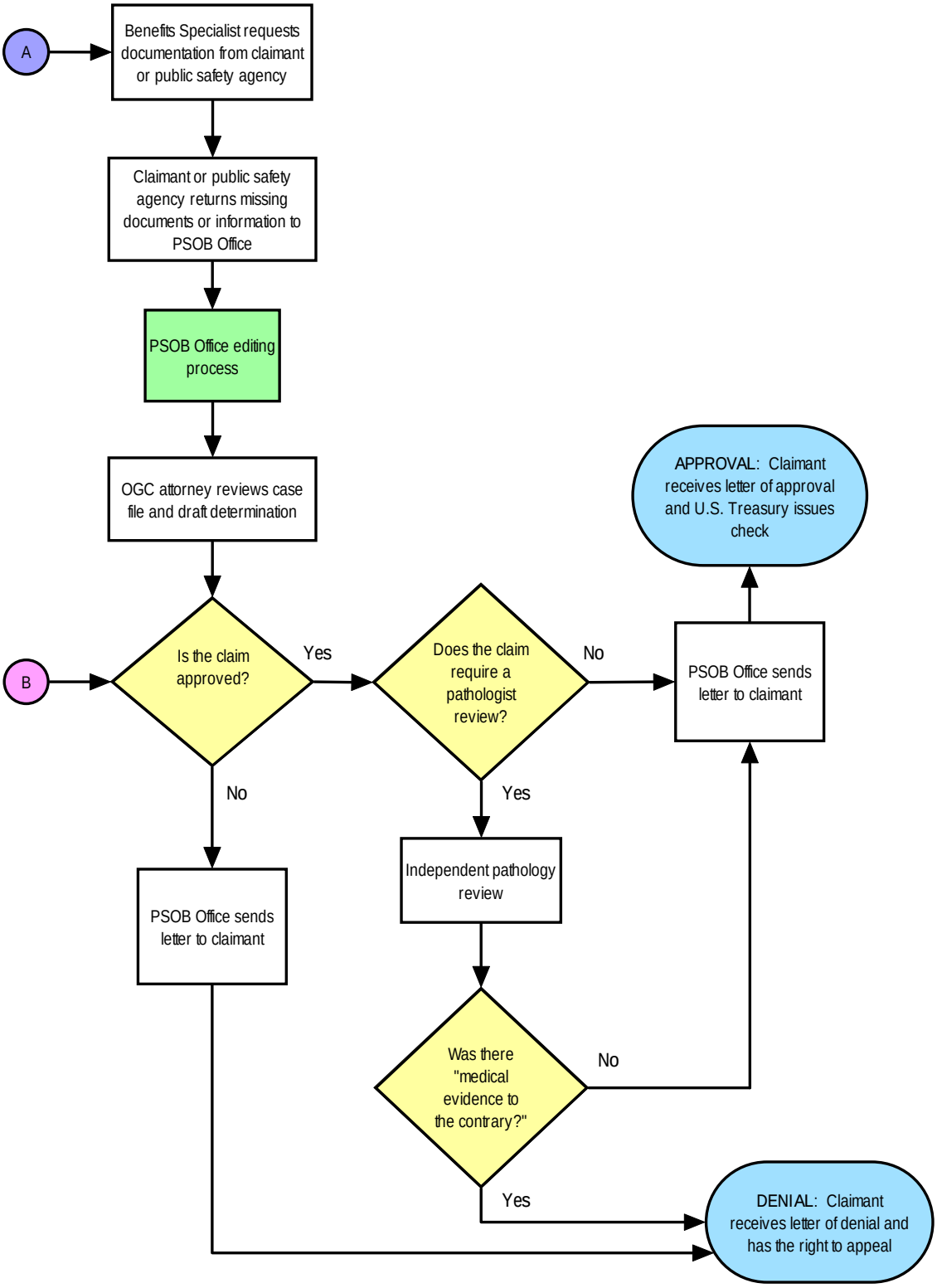
Figure 1: PSOB Claims Review Process



NOTES:

1 The PSOB Office may have to request information from claimants and public safety agencies numerous times.

2 The three green boxes make up the *PSOB Office Editing Process* that is repeated in the claims review process.


A
Benefits Specialist requests documentation from claimant or public safety agency
Claimant or public safety agency returns missing documents or information to PSOB Office
PSOB Office editing process
OGC attorney reviews case file and draft determination
B
Is the claim approved?
Yes
No
Does the claim require a pathologist review?
No
Yes
APPROVAL: Claimant receives letter of approval and U.S. Treasury issues check
PSOB Office sends letter to claimant
PSOB Office sends letter to claimant
Independent pathology review
Was there "medical evidence to the contrary?"
No
Yes
DENIAL: Claimant receives letter of denial and has the right to appeal

PURPOSE, SCOPE, AND METHODOLOGY OF THE OIG REVIEW

Purpose

We examined how OJP has implemented the Hometown Heroes Act and how it processes PSOB claims submitted under the Act. As part of this review, we assessed the timeliness of claims processing and the reasoning behind claims determinations. We initiated this review after receiving congressional requests that expressed concern about OJP's implementation of the Hometown Heroes Act. Specifically, several members of Congress raised concerns about the timeliness of OJP's claims processing and whether OJP's interpretation of the terms "nonroutine stressful or strenuous physical activity" and "competent medical evidence to the contrary" was resulting in a high claims denial rate.

Scope and Methodology

The review encompassed the two offices involved in reviewing and processing PSOB claims: OJP's PSOB Office, which organizationally is under the BJA, and OJP's OGC. We examined each office's role in the PSOB Program and gathered information related to the reasons for claims determinations, how OJP developed its definitions of terms for processing claims, factors affecting timely claims processing, and OJP's initiatives to improve the claims adjudication process.[28] Our fieldwork, conducted from July 2007 to October 2007, included in-person and telephone interviews, data analyses, and document reviews.

Interviews

We interviewed 14 OJP management officials and staff, 5 contractors, 1 medical examiner, and 7 representatives from 4 public safety officer associations. Table 1 lists the individuals interviewed.

[28] We did not evaluate the appeals process for denied claims of the PSOB Program because no claims had completed any level of appeal during our review period. Subsequent to our fieldwork, as of November 29, 2007, Hearing Officers completed reviews of four claims.

Table 1: Interviews Conducted by the OIG

Organizations	Officials Interviewed
BJA, OJP	• Director, BJA • Director, PSOB Program • Senior Benefits Specialist (3) • Benefits Specialist (3) • Paralegal Specialist • Hearing Officer, Contractor (4)
OGC, OJP	• General Counsel • Deputy General Counsel • Staff Attorney (2) • Attorney, Contractor • Paralegal Specialist
Armed Forces Institute of Pathology	• Armed Forces Medical Examiner
Public Safety Officer Associations	
Congressional Fire Services Institute	• Director of Government Affairs
Fraternal Order of Police	• Executive Director • Senior Legislative Liaison
International Association of Fire Fighters	• Assistant to the General President • Legislative Representative
National Fallen Firefighters Foundation	• Chairman of the Board • Executive Director

Data Analyses and Document Reviews

We reviewed and analyzed data that the BJA provided on Hometown Heroes Act claims processed through November 29, 2007. These data included the number of PSOB claims submitted; the number of PSOB claims approved, denied, and pending; and the claim determinations for decided cases.

We reviewed OJP regulations, budget documents, organizational charts, position descriptions, contracts, staff performance plans, memoranda, policy guidance, and manuals. Additionally, we reviewed legislation, congressional testimony, and news articles related to the Hometown Heroes Act. We examined a sample of three PSOB death claim case files. We also reviewed the PSOB database and analyzed PSOB Office staff members' notes on claims entered into the database. Our analysis was limited in part because the PSOB Office database does

not capture the date a claim application is received by OJP and does contain fields to capture the progress of each case through the claims review process.

Because OJP OGC could not provide documentation or records related to its process for updating the PSOB regulations, we relied on the OGC staff's verbal account of their activities and on interviews with public safety officer associations and the AFIP Medical Examiner regarding their involvement in the rulemaking process.

RESULTS OF THE REVIEW

After passage of the Hometown Heroes Act in December 2003, a backlog of 201 claims developed during the 33 months that it took OJP to issue final regulations implementing the Act. Moreover, even after OJP issued the regulations in September 2006, its claims processing was slow because many claims had been submitted without required documentation, OGC's legal reviews of claims were lengthy, and pathology reviews on some claims were not available. After its first year of processing claims under the Act, OJP implemented several initiatives to improve its timeliness.

We also found that OJP denied most of the Hometown Heroes Act claims it processed during the first year because of the lack of evidence demonstrating the officers engaged in "nonroutine stressful or strenuous activity." While most of these denials met the intent of the Hometown Heroes Act, some denials were based in part on an OJP criterion that narrowly interpreted the Act. In the fall of 2007, OJP changed this criterion and issued a policy that all responses to emergency calls would be considered "nonroutine," a revision that appears to have resulted in more approved claims.

In the sections that follow, we describe how OJP revised the PSOB regulations that govern the Hometown Heroes Act program and how a significant backlog of claim applications developed. We also describe actions OJP has taken in the past year to reduce the backlog and expedite claims processing. We then examine OJP's decisions on claims through November 29, 2007, as well as the effect of recent policy changes.

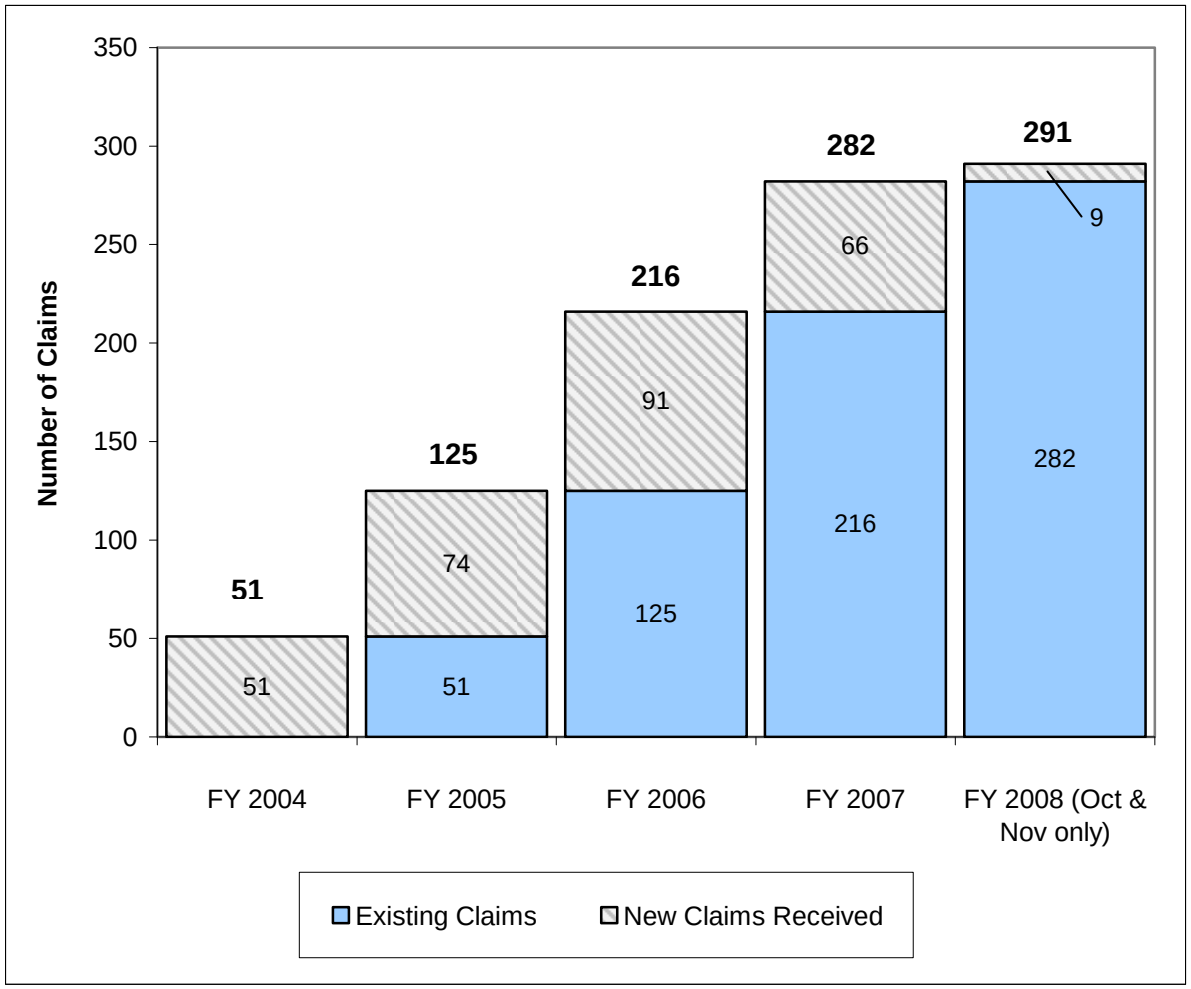
I. OJP'S PROCESSING OF HOMETOWN HEROES ACT CLAIMS

Claims were not processed until regulations were updated.

Thirty-three months passed from the time the Hometown Heroes Act was enacted in December 2003 until OJP issued final PSOB regulations implementing the Act in September 2006. During that

period, OJP accumulated a backlog of 201 claims.[29] As of November 29, 2007, OJP had received an additional 90 Hometown Heroes Act claims for a total of 291 claims. Figure 2 shows the Hometown Heroes Act claims received each fiscal year from the enactment of the Act through November 2007.

Figure 2: Hometown Heroes Act Claims by Fiscal Year



Note: Fiscal year 2008 includes data only from the first 2 months, as of November 29, 2007.

Sources: PSOB claims determinations, PSOB Office database

The PSOB Office issued its first determination on a Hometown Heroes Act claim on December 6, 2006. Over the next year, through November 29, 2007, OJP made determinations on 112 of the 291 claims

[29] Appendix VI summarizes the factors that affected the length of time it took to rewrite the PSOB Program regulations.

(38 percent) it had received. As of November 2007, there were 179 Hometown Heroes Act claims awaiting OJP's final determination, including many claims that had been pending for 3 or 4 years. For example, over 40 percent of the claims submitted in fiscal year (FY) 2004 had not been decided. Table 2 shows the number of claims pending and closed by fiscal year.

Table 2: Pending and Closed Claims by Fiscal Year (as of November 29, 2007)

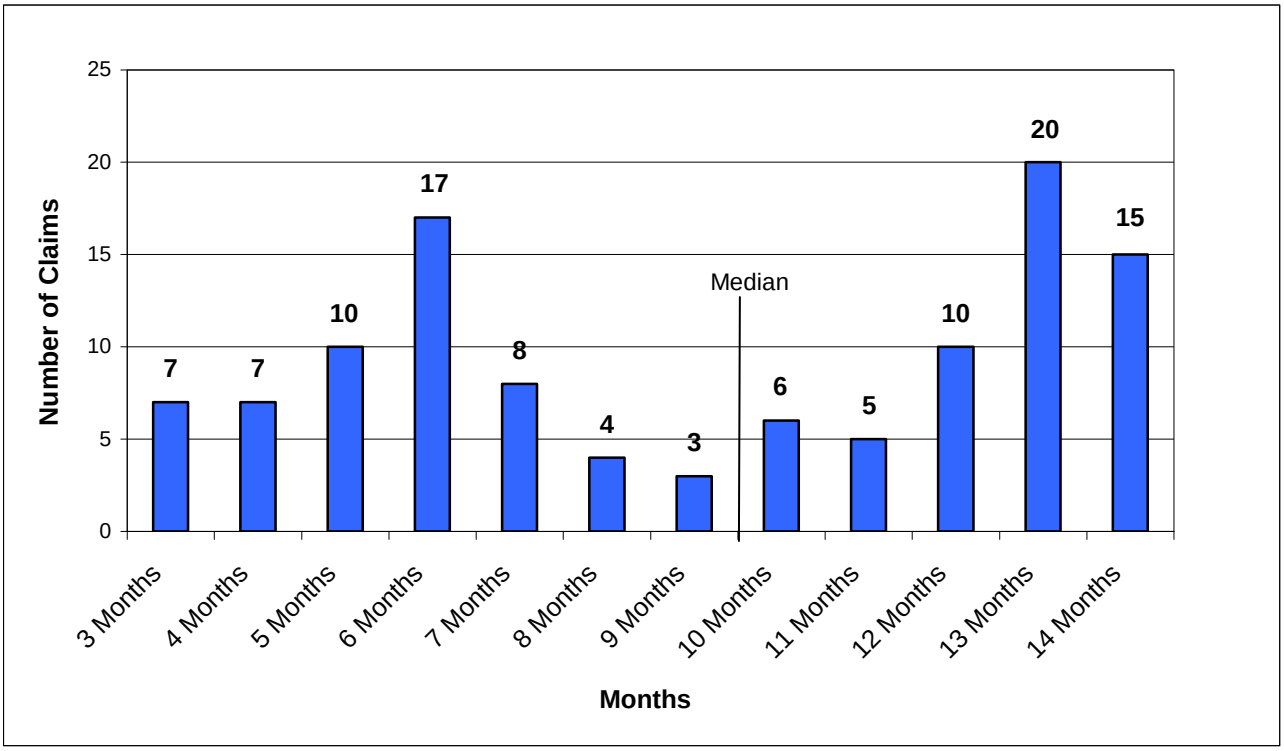
Fiscal Year	Pending Claims		Closed Claims		Total Claims Received
	Number	Percentage of Fiscal Year	Number	Percentage of Fiscal Year	
2004	22	43.1%	29	56.9%	51
2005	32	43.2%	42	56.8%	74
2006	56	61.5%	35	38.5%	91
2007	60	90.9%	6	9.1%	66
2008	9	100.0%	0	0.0%	9
Total	**179**	**61.5%**	**112**	**38.5%**	**291**

Note: The table includes data for only 2 months of FY 2008, as of November 29, 2007.
Source: PSOB claims determinations

Although OJP could not make final determinations until the PSOB Program regulations were issued, we found OJP's subsequent processing of claims was untimely. To assess OJP's processing of claims, we examined how long it took OJP to process claims after issuance of the regulations.[30] As shown in Figure 3, processing times for the 112 completed claims ranged from 3 to 14 months, with a median of 10 months.

[30] The PSOB Office's database does not include a field for the date of a claim application's receipt. However, we were able to estimate the date a claim was received by reading through the "notes" section of the database. To calculate the claims processing time, we used September 11, 2006 (the date PSOB Program regulations were enacted), as the start date for the 102 completed claims OJP received before that date. For the 10 completed claims that OJP received after that date, we used the estimated receipt dates from the "notes" section of the database.

Figure 3: Total Processing Time for Completed Hometown Heroes Act Claims



Sources: PSOB claims determinations, PSOB Office database

We found that the PSOB Office had taken some steps to prepare claims for processing once the final regulations were issued, but these initial actions did not enable OJP to make timely determinations after the regulations were in place. Case notes in the database maintained by the PSOB Office show that while OGC was revising the regulations, PSOB Office staff reviewed each claim application, contacted claimants or points of contact, informed claimants about the status of their claims and the regulations being developed, and requested missing information or documentation based on the original PSOB Program requirements.[31] Despite these efforts, three factors slowed the processing of claims after issuance of the regulations: (1) many claims were submitted without required documentation, (2) OJP OGC's legal reviews were time consuming, and (3) OJP experienced difficulty in obtaining independent

[31] We based part of our analysis on the PSOB Office's database, which contains a "notes" section where staff members record activity on claims and appeals. Although the notes do not always record every action on a claim, we found that entries often included information about such as matters as calls from claimants, questions from OGC attorneys, and when the case file was moved in and out of the PSOB Office.

pathology reviews of PSOB claims. The following sections discuss these factors and the steps OJP has taken recently to address them.

Factor 1: Claimants submitted incomplete claims.

PSOB Office staff members told us that approximately 90 percent of the Hometown Heroes Act claims were submitted without all the information or documentation OJP needed to make a determination. We found that three issues contributed to incomplete claim submissions and the extensive time it took claimants and public safety agencies to provide the missing information. First, the PSOB Program instructions and guidelines for completing claim applications were unclear and did not provide sufficient direction to inform claimants of the information requirements. Second, some of the required documents, particularly medical records, were difficult or costly for the claimants to obtain. Third, smaller and volunteer public safety agencies did not always have the administrative structure to adequately respond to OJP's information requests. When incomplete claim applications were received, the PSOB Office staff said they contacted claimants and public safety agencies to obtain missing information, but could not continue processing the claims until responses were received. PSOB Office staff members stated that delays resulting from obtaining necessary information from the claimants and public safety agencies added from a week to a year to the processing of individual claims. A discussion of each of these three issues follows.

Limited Instructions and Guidance on Completing Claims

We found that although information about the Hometown Heroes Act and how to submit a claim under the Act was available, the information was not presented in an understandable manner. OJP provided instructions on submitting claims that were scattered among standardized claim forms, the PSOB Program regulations, two checklists, a Hometown Heroes fact sheet, and a list of frequently asked questions about the Act. No single document took a claimant step-by-step through the application process, detailed the eligibility and beneficiary requirements, and specified all required documentation.

For example, the required standardized PSOB claim forms – Claim for Death Benefits (completed by the claimant) and Report of Public Safety Officer's Death (completed by the public safety agency) – contained limited instructions that did not explain the claim process or list all the documents that may be required for a claim determination. Instead, the instructions referred the claimant to the PSOB Act and regulations for

eligibility requirements. However, the statutory and regulatory language was not easy for claimants and public safety agencies to interpret.

We also found that although OJP had issued instructions for public safety agencies, it had not developed separate instructions specifically for claimants. Specifically, OJP had two checklists for public safety agencies (one for firefighters and one for law enforcement) that outlined all documents, reports, and information needed for the claim application. The checklists provided helpful tips to public safety agencies and encouraged properly documented submissions.[32] No similar checklist existed for claimants. Therefore, a claimant who may have been working on an application without the assistance of a public safety agency may not have realized certain documentation was needed for the claim.

We also reviewed two PSOB Office documents added to the BJA website in September 2007 that contained only general information about the PSOB Program. The first, a fact sheet, provided a history of OJP's implementation of the Hometown Heroes Act. The second, a list of frequently asked questions, addressed questions arising from concerns over PSOB Office requests for medical information and the backlog of claims. Neither provided instructions on how to fill out claims applications.

Difficulties in Obtaining Documents

The second issue that contributed to incomplete claim submissions was the difficulty and costs associated with obtaining certain required information. For example, according to PSOB Office staff and representatives of public safety agencies that we interviewed, the request to submit 10 years of medical records for the pathologist's review was particularly challenging for some claimants. Other documents that PSOB Office staff told us have sometimes proved difficult for claimants to obtain included birth certificates, death certificates, marriage certificates, and divorce decrees. In addition, PSOB Office staff said that claimants must sometimes pay fees to obtain the required medical records and other documents.

[32] For example, the checklists stressed the importance of and provided instructions for completing the detailed statement regarding the 24-hour period prior to the public safety officer's heart attack or stroke.

Lack of Administrative Structure in Small and Volunteer Public Safety Agencies

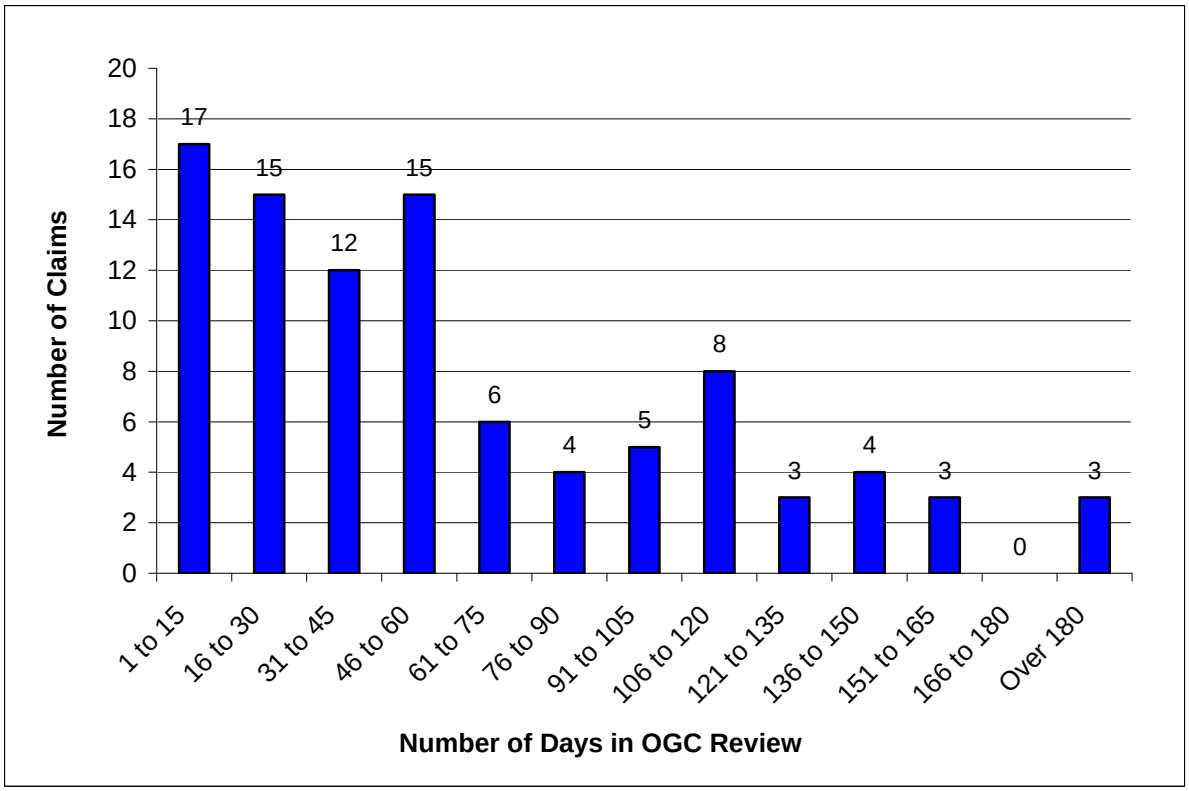
The third issue that contributed to incomplete applications was the fact that many smaller public safety agencies, particularly volunteer fire and emergency services departments, lacked the administrative systems and resources to produce the required documentation. Such documents include the PSOB Report of Public Safety Officer's Death, a second statement detailing the circumstances of the officer's death, and other investigation, incident, or accident reports. The PSOB Director stated that unlike larger public safety agencies, many small and volunteer departments do not have extensive recordkeeping requirements or do not generate standard reports, such as daily logs of volunteers' activities, which would facilitate the collection of documentation for a claim. Additionally, smaller departments may not have personnel designated to act specifically as a liaison or point of contact for claimants and the PSOB Office. Because only the public safety agencies can generate some of these documents, if they cannot or do not provide them, claimants may submit incomplete applications.

Factor 2: OJP OGC's reviews of claims were lengthy.

The second factor that contributed to the slow processing of claims was the time it took OJP OGC to conduct its legal reviews of claims. From our examination of the PSOB Office database, we estimated that OGC took, on average, 50 days to review a claim; however, these reviews ranged from under 10 days to over 200 days.[33] Figure 4 shows the number of days that OGC spent reviewing those claims that were completed as of November 29, 2007.

[33] The PSOB Office database does not contain separate data fields to record dates that claims are sent to and received from the OGC. The dates used in our analysis were extracted from the "notes" section of the database. The "notes" section did not have dates for all the completed claims. The times estimated do not include periods when the case files were returned to the PSOB Office for additional documentation or information, but only the actual time the case file was in OGC for review.

Figure 4: Number of Days OGC Spent Reviewing Claims That Were Completed as of November 29, 2007



Sources: PSOB claims determinations, PSOB Office database

We found that the OGC's review of some claims was lengthy because of its inefficient internal practices for requesting documentation and assigning claims to attorneys. We discuss each of these practices below.

OGC Requests for Documentation

The PSOB Director and staff told us that OGC attorneys often would not review a claim or make a final determination until *all* documentation was in the case file because they wanted to review the case in its entirety. However, according to PSOB staff, in some cases the additional documents were not necessary for making a determination on whether the claim was compensable under the Hometown Heroes Act. For example, documents to establish potential beneficiaries (e.g., birth certificates, marriage licenses, or divorce decrees) are not needed unless a claim is determined to be compensable.

PSOB Office staff also told us that the OGC attorneys sometimes requested additional documents and information, such as a report of a

decedent's activities for the 24 hours prior to the heart attack or stroke, even when the claim did not meet the basic criteria established by the PSOB Act or the Hometown Heroes Act. For example, a claim is not compensable if the decedent was not a public safety officer, so an activity report would have no effect on the claim determination. The OJP General Counsel told us the attorneys seek additional information because they are looking for every possible way to approve a claim. The Deputy General Counsel further stated that the attorneys in the past have asked for information that now, with greater experience, realize may not be necessary.

PSOB staff also told us that different attorneys would review the same claim at different times but not keep records of their reviews, which sometimes led to duplicative information requests.[34] In addition, PSOB and OGC staff told us that the attorneys had no formal method for recording information requests in a case file, so their requests were not documented unless they were noted in the PSOB database by PSOB Office staff members. The Deputy General Counsel told us that she encourages attorneys to put information requests and comments in writing, but acknowledged that while attorneys sometimes write comments on tracking slips attached to the case files, communication is informal and often occurs through telephone or e-mail conversations. This informal system does not ensure that all communication is recorded.

In addition, the PSOB Office staff said that the length of the claims review process was extended because OGC attorneys made numerous inconsistent edits to the draft determinations prepared by the PSOB Benefits Specialists and Senior Benefits Specialists. According to PSOB Office staff, they prepared the determinations using a template developed specifically for that purpose, but OGC attorneys continued to make changes to the formatting and standard language in the template. The PSOB Office staff said the changes were sometimes based on legal issues, but more often were stylistic, with several attorneys reviewing the claims and each making individual changes according to their personal styles. According to PSOB staff, these types of changes caused confusion among the PSOB Office staff and delayed issuance of determinations. The Deputy General Counsel told us that she had directed the attorneys to cease editing based on writing style and to focus only on editing that affected the legal issues related to the claim.

[34] OGC does not have an automated or formal paper system for recording notes about PSOB claims.

OGC Case Assignments

OGC's practice has been to assign PSOB claims, including Hometown Heroes Act claims, among many OGC attorneys, according to the attorneys we interviewed and the General Counsel. The General Counsel stated that he wanted staff attorneys to gain experience in all OJP programs, so he intentionally spread the work among a number of attorneys. As of October 2007, various types of PSOB claims (death, disability, and education) were assigned to 11 of the 16 OGC staff attorneys. Each of the 11 attorneys spent about 20 to 30 percent of his or her time on the PSOB Program.[35] However, the PSOB Director believed that because so many different attorneys work on the claims on less than a half-time basis, they were less able to develop expertise on the PSOB Program and especially on the Hometown Heroes Act. The PSOB Director said she had asked OGC for a smaller cadre of attorneys to dedicate more of their time to the PSOB Program, but OGC had not changed its work assignments.

No Timeliness Standards

While discussing with OGC staff how they reviewed PSOB claims, we noted that OGC had no established timeliness standards for conducting its claims reviews.[36] In response to our request for any established performance standards, the Deputy General Counsel stated the she had told attorneys to give a claim to another attorney if they could not examine the case file within 2 weeks of receipt, but that the OGC has no specific goals or measures to guide the length of the case review. The Deputy General Counsel told us that timeliness was a part of the office's customer service standards and referred us to the OGC staff attorney performance work plans. When we reviewed these work plans, we found they included the following language under the overall goal of customer service: "Reviews client documents for legal compliance/sufficiency within the timeframe agreed upon with client office or General Counsel." However, we did not find that OGC attorneys

[35] The one contract attorney hired to work on PSOB claims was working full time solely on claims submitted under the Hometown Heroes Act.

[36] In 2004, former Attorney General Ashcroft directed the PSOB Office to make a determination on all filed PSOB claims within 90 days of receiving all necessary information and identifying all potential beneficiaries. Our review of the PSOB database case notes indicated that the PSOB Office completed their portion of processing claims well within 90 days after receiving all the necessary documentation from claimants. (John Ashcroft, Attorney General, U.S. Department of Justice, memorandum to OJP and BJA, *Public Safety Officers' Benefits Program*, May 13, 2004).

had made any agreements regarding timeliness with the PSOB Office staff members. Consequently, there were no established time standards for conducting the claims reviews.

Factor 3: Claims were delayed pending new contract pathologist.

The final factor that delayed OJP's processing of Hometown Heroes Act claims was that OJP experienced difficulty in obtaining independent pathology reviews. OJP initially sent all the claims to the AFIP, where an AFIP pathologist reviewed the medical records, toxicology report, and autopsy report for each claim. This review took from 4 to 6 weeks. Then, as the claims review process progressed, OJP sent the AFIP only those claims that had been initially found to be compensable under the Act. However, in May 2007 the AFIP ceased doing any reviews for the PSOB Program because an increasing amount of its time was focused on military casualties from the war in Iraq. After the AFIP informed OJP that it could no longer perform these reviews, OJP searched for a new contract pathologist. In the interim, claims were delayed. In September 2007, OJP hired a contract pathologist to review the PSOB death claims. OJP also identified two other contract pathologists who are available should the workload require additional reviewers.

OJP has taken steps to improve the timeliness of the claims review process.

Toward the end of our review period, in the fall of 2007, the BJA and OJP OGC implemented improvements to address several of the factors that contributed to the lengthy claims review process. These initiatives included additional guidance to claimants and internal procedural changes to speed the claims review process. While early evidence suggests that some of these initiatives have improved claims processing, we could not fully determine their effect on the process because they were implemented near the conclusion of our field work.[37]

For example, during FY 2007, the first full year of processing claims after issuance of the final regulations, OJP issued 72

[37] However, OJP provided the OIG with an update to the numbers of Hometown Heroes Act claims processed and pending in an e-mail in March 2008. As of March 26, 2008, OJP had received a total of 303 claims, of which 213 had been decided, 1 had been withdrawn by the claimant, and 89 were pending a determination. OJP had approved 122 claims and denied 91 claims, 8 of which were overturned on appeal to approvals. The backlog of claims OJP developed during the time the program regulations were developed was reduced from 201 to 27.

determinations. However, during just the first 2 months of FY 2008, OJP issued 40 determinations, although processing of the cases began before that time. These improvements are discussed below.

Additional Guidance and Change in Claim Requirements

To address the problem of receiving incomplete claims submissions and to reduce claimants' response times to requests for additional documentation, OJP took the following four steps:

The Attorney General's Guide to the Hometown Heroes Act

The BJA, with input from public safety officer associations, developed a guide to the Hometown Heroes Act for claimants and public safety agencies. The guide compiles claim application instructions in a single document that contains detailed information on the Hometown Heroes Act and the criteria used to evaluate claims. The guide also translates the legal language used in the statute and program regulations into clearer instructions. The BJA said it expected to issue the guide in February 2008.

Local Assistance State Teams

To help claimants and public safety agencies complete PSOB claim applications, the BJA awarded a grant in 2006 to the National Fallen Firefighters Foundation to develop the Local Assistance State Teams (LAST) program. When a firefighter dies in the line of duty, a team is deployed to aid the decedent's family, the public safety agency, and colleagues with funeral arrangements, counseling, and submitting a PSOB claim, among other things.[38] As of October 2007, 36 states and the District of Columbia had active teams. The PSOB Director said she believed the LAST program would improve the public safety community's knowledge of the PSOB Program. She also told us that the program had already resulted in the submission of more complete PSOB claims applications than in the past. In August 2007, the BJA awarded a grant to an organization called Concerns of Police Survivors to establish the same type of program for the law enforcement community.

[38] Team leaders are chosen by each individual state fire service. Teams are composed of a chaplain, an honor guard, a behavior health specialist, a survivor, and a fire officer.

Medical Records

On October 2, 2007, the BJA Director issued a memorandum directing the PSOB Office to request 10 years of medical records for Hometown Heroes Act claims only if the evidence in a case file suggests that something other than the line-of-duty activity caused the heart attack or stroke. If an autopsy report, coroner's report, or death certificate identifies the presence of cardiovascular disease or other risk factors, this information will not be considered unless the case file shows that the decedent knew of and continued to aggravate these conditions. The memorandum further stated that OJP will review any medical records requested from the claimant for mitigating evidence in favor of the claim.[39] The PSOB Office expects this decision to reduce delays in processing of claims where medical records are not required to make a determination.

State and Local Line-of-Duty Death Benefits

Similarly, in October 2007 the OGC Deputy Counsel told us that because some states and localities do not offer death benefits for heart attacks and strokes, OGC is no longer requesting that the PSOB Office obtain documentation on payment of these benefits from claimants in those states or localities.

Changes to Internal Processing of Claims

In addition, OJP recently has introduced the following three initiatives to improve the timeliness of claims processing:

"12-a-Week" Initiative

The PSOB Director started a "12-a-week" initiative in August 2007 to work through the pending Hometown Heroes Act claims and to accelerate the PSOB claims process overall. The PSOB Office staff and the Director meet weekly to discuss the 12 oldest Hometown Heroes Act claims in their caseload. The staff members determine whether the case files include all the evidence necessary to render a decision and then forward those that do to OGC for legal review. According to the PSOB Director, referral is not delayed if the case file lacks documents or information that would not affect the decision to approve or deny the

[39] Domingo Herraiz, Director, Bureau of Justice Assistance, Public Safety Officers' Benefits Program Policy Memorandum, re: "Competent Medical Evidence to the Contrary," October 2, 2007.

claim, such as beneficiary information. The BJA Director stated in testimony before the Senate Judiciary Committee on October 4, 2007, "We are fully committed to this 12-in-a-week strategy until all claims have been processed and normalized to about seven new cases per month by March 2008."

Outreach Administrative Contractors

In FY 2007, the PSOB Director created the position of Outreach Administrative Contractor to handle the most time-consuming tasks associated with PSOB claims processing, such as contacting claimants and public safety agencies for additional information and documents. The Director said she believed this would allow the Benefits Specialists and Senior Benefits Specialists to concentrate on analyzing case file evidence and rendering determinations. The PSOB Director hired one contractor in September 2007 and said she intended to hire at least one additional contractor if needed.

PSOB Case Management System

In October 2007, the PSOB Office began the first phase of implementing a new case management system. The PSOB Office's previous database did not allow for detailed searches, reminders for follow-up actions on claims, or a direct link to scanned documents that accompany claims. The new system enables the Benefits Specialists to check supporting scanned documentation within the claim record, which can improve claim processing times. Further, unlike the old database, the new system can be accessed by OGC attorneys, and attorneys working on PSOB claims can view entire case files in the system and leave notes for the PSOB Office, such as requests for additional documentation or information. Thus, communication between the PSOB Office and OGC attorneys will be conducted in the electronic case file for future reference.

II. OJP'S DECISIONS ON CLAIMS PROCESSED

From September 11, 2006, to November 29, 2007, OJP made determinations on 112 of 291 Hometown Heroes Act death claims. Overall, OJP approved 47 claims and denied 65 claims. The benefits awarded in the 47 approved claims totaled $12,889,452.

We reviewed the determinations for all 112 completed Hometown Heroes Act claims to examine the reasoning behind OJP's decisions. Because claimants and members of Congress had expressed concern that OJP's interpretation of the Hometown Heroes Act's terms "nonroutine stressful or strenuous physical activity" and "competent medical evidence to the contrary" resulted in unfair denials of many claims, we examined how OJP applied these terms when evaluating claims.

Denied Claims

OJP determined that 10 of the 65 denied claims did not contain evidence to meet basic eligibility criteria established in the PSOB Act or the Hometown Heroes Act. For example, in several cases the decedent was not a public safety officer, or was not on duty in the 24 hours prior to death, or did not perform line-of duty activities.

For the remaining 55 denied claims that met the basic eligibility criteria, we found that OJP focused primarily on the claim's evidence regarding the stressful and strenuous nature of the decedents' physical activity or training exercise. Overall, OJP concluded that the 55 claims were non-compensable because the evidence in the applications did not sufficiently show that the public safety officer engaged in "stressful or strenuous physical activity or training."[40] Finding "competent medical evidence to the contrary" was not a factor in any of the denied claims.

We determined that OJP narrowly interpreted the Act for at least 19 claims denied during the first year of claims processing. OJP denied 19 claims in which officers had responded to calls based on a criterion that was changed in October 2007. After October 2007, OJP considered

[40] To be considered *stressful*, the physical activity must pose or appear to pose "significant threats or hazards" or involve "reasonably foreseeable risks of such threats or hazards" and provoke or cause "an unusually-high level of alarm, fear, or anxiety." To be considered *strenuous*, the activity must "entail a high level of physical exertion." See 42 U.S.C. § 3796 (2006).

any response to an emergency call to be "nonroutine" and attributed the approval of some subsequent claims to the policy change.

We present OJP's reasons for the 65 denials below.

Cases That Did Not Meet the Basic Criteria of the Act

As mentioned above, 10 of the 65 claims denied were cases in which the applications did not show that the claims met the basic criteria established in the PSOB Act or the Hometown Heroes Act. Five of these claims did not show evidence that the decedent was a public safety officer, four did not show evidence that the officer was on duty in the 24 hours prior to the heart attack or stroke, and one did not show evidence that the death met the requirements for "line of duty" activities.[41]

Cases Involving Officers Who Did Not Respond to a Call

Twenty-seven of the 65 denied claims involved officers who were on duty but did not respond to a call and did not engage in a qualifying activity as required by the PSOB Act.[42] The officers' activities in these 27 claims varied from administrative duties, such as filling out paperwork or attending meetings, to ancillary activities, such as routine maintenance on department vehicles, marching in a parade as a member of the department, installing smoke detectors for citizens, or manning the station house.

OJP denied other claims in this category because the officers' activities did not involve great physical exertion, such as correctional officers who made rounds and assisted in food service but did not respond to an emergency, or because the officers conducted only regular patrols or routine traffic stops.

[41] The PSOB program defines line of duty activity as "activity or an action that [the public safety officer] 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. . . . [The activity] 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." See 28 C.F.R. § 32.3 (2006).

[42] Qualifying activities include law enforcement, fire suppression, rescue activity, hazardous material response, emergency medical services, disaster relief activity, or other emergency response. See 42 U.S.C. § 3796 (k)(1)(A) (2006).

Cases Involving Officers Participating in Training

Another 9 of the 65 denied claims involved public safety officers who died after suffering a heart attack or stroke while participating in training activities that did not meet the definition established in the PSOB Program regulations. Some of these officers attended training sessions in a classroom that did not involve physical activity or engaged in physical fitness training (such as lifting weights or walking on a treadmill) that did not simulate significant threats or hazards and provoke or cause an unusually high level of alarm, fear, or anxiety, as required by the regulations. In other cases, OJP denied claims because officers prepared the training or observed participants in a training session but did not engage in the training activities.

Cases Involving Officers Who Responded to a Call: Potentially Narrow Interpretation of the Act

Nineteen of the 65 denied claims involved cases in which a public safety officer had responded to a call. According to the OJP claim determinations, the claims involved officers who suffered a heart attack or stroke: (1) before arriving at the scene, (2) after responding to a false alarm, (3) after responding to a call where they did not conduct any activities at the scene, (4) after responding to a call where they did not conduct any "law enforcement, fire suppression, rescue, hazardous material response, emergency medical services, prison security, disaster relief, or other emergency response" activities at the scene, or (5) after responding to a call where they conducted activities at the scene that were not considered stressful or strenuous.[43]

OJP evaluated the 19 claims using a narrow interpretation of the Hometown Heroes Act. OJP concluded that the claims did not have enough evidence to show that the officer's response to the emergency call involved "nonroutine stressful or strenuous physical activity" or that the officers' activities after responding to the call qualified as "law enforcement, fire suppression, rescue, hazardous material response, emergency medical services, prison security, disaster relief or other emergency response activity."[44] Responses to emergency calls were not automatically defined as "nonroutine" and OJP evaluated the evidence in each claim to determine if the officers' emergency response activities met

[43] 42 U.S.C. § 3796 (k)(1)(A) (2006).

[44] 42 U.S.C. § 3796 (2006).

the requirements of the Hometown Heroes Act and PSOB Program regulations.

However, after the first year of processing claims, OJP broadened how it applied the definition of "nonroutine activities." In October 2007, the BJA issued a policy memorandum that stated that any response to an emergency call was to be considered "nonroutine."[45] The memorandum also stated that claims were to be reviewed based more on how stressful or strenuous an activity was and less on the frequency with which it was performed. Further, no activity was to be considered routine based solely on the public safety agency's description of the activity as being "routine" or "ordinary." The PSOB Director told us that the policy was instituted as a result of the experience gained after a year of processing claims. She said that OJP realized that responding to an emergency call should be automatically defined as "nonroutine." These 19 denied claims were decided prior to issuance of the October 2007 memorandum.

After issuance of the policy memorandum, the Director of the PSOB Office told us that the revised policy had resulted in more approved claims. The Director further stated that she intended to call each claimant whose Hometown Heroes Act claim had been denied prior to issuance of the clarification and whose claim was not already in the appeals process, to inform the claimant of the new policy. OJP also waived the standard appeal deadline of 33 days after notice of denial to allow these claimants to appeal the denied claims if they chose.

Our examination of the determinations after the policy change confirmed that the number of approved claims increased after the change in the policy. Prior to October 2007, OJP denied 58 of 72 claims and approved 14. In comparison, during the first 2 months of FY 2008, OJP issued another 40 determinations, denying 7 claims and approving 33.[46]

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[45] OJP OGC considers this policy direction a "rebuttable presumption." Domingo Herraiz, Director, Bureau of Justice Assistance, Public Safety Officers' Benefits Program Policy Memorandum, re: "Nonroutine Stressful or Strenuous Physical Activity," October 2, 2007.

[46] Our review of the claims determinations indicated that the increase in approvals after October 2007 may not be solely attributable to the policy change. Only 8 of the 33 approved claims (and none of the 7 denied claims) involved officers responding to a call that had similar circumstances to the 19 denied claims mentioned above. These eight approved claims involved officers who suffered a heart attack or stroke before arriving at the scene, after responding to a false alarm, or after arriving on the scene and not conducting any activities. The remaining 25 approved claims had evidence showing that the public safety officer engaged in law enforcement, fire

(Cont.)

Additionally, we reviewed Hearing Officers' reports from the four appeals that were completed after the issuance of the October 2007 memorandum.[47] These four appealed claims were among the 19 denied claims involving officers who responded to calls. Hearing Officers recommended approvals for all four claims, and the BJA Director concurred with the approvals.[48]

Table 3 on the next page summarizes OJP's stated reasons for denying the 65 claims, and Appendix VII provides additional details on the officers' activities as described in the claim determinations.

suppression, rescue, hazardous material response, emergency medical services, prison security, disaster relief, or other emergency response activities that were considered "nonroutine stressful or strenuous" and were not based on the broader application of the definition in the October 2007 memorandum.

[47] As of November 29, 2007, 30 of the 65 claims that OJP determined were not compensable had been appealed to a Hearing Officer. Hearing Officers had completed reviews of 4 of the 30 appeals.

[48] During the appeal hearings, claimants had the opportunity to present additional or new evidence and call witnesses. For example, one claimant had 14 witnesses that testified to the fire response activities, the severe weather conditions that hampered the fire response, or the stressful and strenuous nature of the fire response.

Table 3: OJP's Reasons for Denying Completed Claims

Reasons for Denial	Number of Claims
CASES THAT DID NOT MEET BASIC CRITERIA	**10**
Not a public safety officer	5
Not on duty the 24 hours prior to heart attack or stroke	4
Activities were not conducted in line of duty	1
CASES INVOLVING OFFICERS WHO DID NOT RESPOND TO A CALL	**27**
Conducted only administrative duties	6
Did not respond to a call and was not engaged in fire suppression, responding to a fire, rescue emergency or situation, police emergency or situation, or training	15
Did not respond to a call – conducted regular correctional duties	2
Did not respond to a call – conducted regular patrol or traffic stop	4
CASES INVOLVING TRAINING	**9**
Participated in routine, non-stressful, non-strenuous training activities	7
Prepared and tested a fire training maze, which was routine *and* not stressful or strenuous	1
Observed participants in a training session but did not engage in activity	1
CASES INVOLVING OFFICERS WHO RESPONDED TO A CALL	**19**
Responded, but had heart attack or stroke while getting ready to respond or before arriving at scene	4
Responded, but did not conduct any activities at the scene	3
Responded, but conducted supervisory duties or no physical activities.	2
Call responded to was not an emergency or the officer did not conduct any law enforcement or emergency activities	3
Call responded to was a false alarm, or the officer was told to turn around or did not proceed	5
Activities performed were routine *and* not stressful or strenuous	2
Total	**65**

Source: PSOB claim determinations

Approved Claims

We also reviewed OJP's determinations for the 47 approved claims to identify activities that OJP determined to be the type of "nonroutine stressful or strenuous physical activity or training" covered by the Hometown Heroes Act. The following four synopses are presented as examples that illustrate the types of activities performed by public safety officers in the approved claims:

- A firefighter participated in training that involved survival skills and the agency's first "air consumption drill." During the training, he wore full protective gear and a self-contained breathing apparatus. The firefighter brought an injured colleague out of the building, removed a firefighter from a hole in the floor, participated in search and ventilation simulations, climbed stairs, and carried fire hoses. He then completed four laps of the course until his low air pressure alarm sounded. Later the firefighter complained of not feeling well and was transported to a medical facility, where he was pronounced dead as a result of a heart attack.

- A police officer and aid workers were dispatched to a residence of a diabetic male with a history of aggressive behavior toward medical responders and law enforcement officers in treatment situations. The officer arrived at the scene first and asked for backup assistance once he was in the bedroom. He then pushed the emergency distress button on his radio. A struggle between the officer and man could be heard over the radio. The officer stated that the subject had a gun, but that he had managed to get the individual in handcuffs. Additional law enforcement officers entered the room, observed signs of a struggle, and found the officer unconscious on the bed. After being transported to a hospital, the officer was pronounced dead as a result of a heart attack.

- Less than 2 minutes after receiving a call, a firefighter responded in full "turn-out" gear to a house fire. He immediately helped breach the first floor walls to expose the fire and then extinguished the flames. The firefighter later collapsed and was transported to a hospital, where he was pronounced dead as a result of a heart attack.

- An emergency medical technician (EMT) responded to two calls during his shift: a fire alarm in a commercial building and an

auto accident with entrapped individuals. At the site of the accident, the EMT extracted a passenger from the vehicle and collapsed when helping load the passenger into the ambulance. The EMT was transported to a hospital, where he was pronounced dead as a result of a heart attack.

CONCLUSION AND RECOMMENDATIONS

OJP took 33 months to develop implementing regulations and was slow in processing submitted claims. As a result, it had completed only 112 (38 percent) of the 291 Hometown Heroes Act claims it had received as of November 29, 2007. After the updated PSOB Program regulations became effective, OJP's slow progress in completing determinations for Hometown Heroes Act claims during the first year continued because of inefficiencies in the claims review process. The inefficiencies included lengthy legal reviews of claims and multiple requests for additional documents by OJP OGC, no established timeframes for attorney reviews, no formal method of recording attorneys' requests for information, incomplete claims submissions, and delayed pathology reviews that prevented timely assessments of claims.

In the fall of 2007, the BJA initiated several actions designed to expedite the claims review process. For example, the BJA awarded grants to public safety officer associations that formed teams to help deceased officers' families and public safety agencies submit more complete PSOB claim. The BJA also began developing more user-friendly guidance for PSOB claimants and agencies and began forgoing requests for information from claimants and agencies that is not critical to a claim determination. Although we could not fully determine the effect of the OJP initiatives because they were implemented near the conclusion of our field work, early evidence suggests that the timelines of claims processing has improved. For example, while OJP issued determinations on 72 claims during all of FY 2007, in the first 2 months of FY 2008, it issued determinations on 40 claims.

Our review of OJP's completed claim determinations showed that OJP initially denied most claims based on an evaluation of the stressful and strenuous nature of the physical activity or training exercise. However, in some cases OJP used a narrow definition of what qualified as "nonroutine" for evaluating and denying the claims. In October 2007, OJP issued a policy change that implemented a broader definition that considers all emergency calls as "nonroutine." The PSOB Director told us that OJP made this change based on a year of experience processing claims and recognizing the need to clarify the definition of "nonroutine." Since this policy change, more claims have been approved, and OJP has notified past claimants of the changed standards to allow them to appeal their denials.

To further improve management of the Hometown Heroes Act claims process, we recommend that the BJA and OJP OGC take the following actions:

1. The BJA should finalize the "Attorney General's Guide to the Hometown Heroes Act."

2. The OJP OGC staff attorneys should use the PSOB Office case management system to record their case notes, requests for documentation, and other case-related communication with the PSOB Office.

3. OJP OGC should establish more definitive performance timelines for attorneys' reviews of PSOB claims to facilitate claims processing.

APPENDIX I: The Hometown Heroes Survivors Benefits Act of 2003

Public Law 108–182
108th Congress

An Act

To ensure that a public safety officer who suffers a fatal heart attack or stroke while on duty shall be presumed to have died in the line of duty for purposes of public safety officer survivor benefits.

Dec. 15, 2003
[S. 459]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Hometown Heroes Survivors Benefits Act of 2003.
42 USC 3711 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Hometown Heroes Survivors Benefits Act of 2003".

SEC. 2. FATAL HEART ATTACK OR STROKE ON DUTY PRESUMED TO BE DEATH IN LINE OF DUTY FOR PURPOSES OF PUBLIC SAFETY OFFICER SURVIVOR BENEFITS.

Section 1201 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796) is amended by adding at the end the following:

"(k) For purposes of this section, if a public safety officer dies as the direct and proximate result of a heart attack or stroke, that officer shall be presumed to have died as the direct and proximate result of a personal injury sustained in the line of duty, if—

"(1) that officer, while on duty—

"(A) engaged in a situation, and such engagement involved nonroutine stressful or strenuous physical law enforcement, fire suppression, rescue, hazardous material response, emergency medical services, prison security, disaster relief, or other emergency response activity; or

"(B) participated in a training exercise, and such participation involved nonroutine stressful or strenuous physical activity;

"(2) that officer died as a result of a heart attack or stroke suffered—

"(A) while engaging or participating as described under paragraph (1);

"(B) while still on that duty after so engaging or participating; or

"(C) not later than 24 hours after so engaging or participating; and

"(3) such presumption is not overcome by competent medical evidence to the contrary.

"(l) For purposes of subsection (k), 'nonroutine stressful or strenuous physical' excludes actions of a clerical, administrative, or nonmanual nature.".

Approved December 15, 2003.

APPENDIX II: PSOB Death Claim Forms

Approved OMB No. 1121-0024 (Expires: 04/30/2007)

U.S. DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS BUREAU OF JUSTICE ASSISTANCE PUBLIC SAFETY OFFICERS BENEFITS PROGRAM WASHINGTON, D.C. 20531 **CLAIM FOR DEATH BENEFITS**	FOR DOJ USE ONLY CASE NUMBER _____ DATE RECEIVED _____

This form should be filed by a surviving spouse, child/children, insurance beneficiary and/or parent(s) of the deceased public safety officer. This claim may be prepared by someone on behalf of these individuals. If you are filing on behalf of others, you must attach evidence of your authority to do so. **PLEASE PRINT PLAINLY OR TYPE**

1. NAME OF OFFICER (Last, First, Middle)		2. OFFICER'S TITLE
3. SOCIAL SECURITY NUMBER	4. DATE OF INJURY	5. DATE OF DEATH
6. NAME AND PHYSICAL ADDRESS OF EMPLOYING AGENCY, ORGANIZATION OR UNIT IN WHOSE SERVICE DEATH OCCURRED (Include zip code)		

INSTRUCTIONS: To ensure payment to all eligible individuals, attach valid documentation (such as notarized, certified, or attested to documentation) regarding marriage, divorce, separation decrees, death certificates, birth certificates, adoption papers, custody agreements, or other evidence of parent-child relationship, as appropriate for any claimant in Parts I and II

PART I INFORMATION ON SURVIVING BENEFICIARY

If at the time of an officer's death the officer was survived by a husband, wife, or parent(s), Part I should be completed. If there are children of the officer, regardless of age or dependency, Part II must be completed. (Attach certified copies of marriage license, all divorce decrees (including custody agreements), or separation agreements as applicable to martial relationship with the officer and certified copies of children's birth certificates.) If the decedent is survived by neither spouse nor eligible child, provide a copy of the officer's most recent life insurance policies. **PLEASE NOTE:** The decedent's employing agency will be asked to provide departmental insurance policies.

7. ELIGIBLE BENEFICIARY Spouse ☐ Mother ☐ Father ☐ Other beneficiary ☐

NAME (Last, First, Middle)	SOCIAL SECURITY NO.
MAILING ADDRESS (Include zip code)	
NAME (Last, First, Middle)	SOCIAL SECURITY NO.
MAILING ADDRESS (Include zip code)	

8. MARITAL STATUS OF OFFICER AT TIME OF DEATH. MARRIED ☐ SINGLE ☐ SEPARATED ☐ OTHER ☐ _____ (Please identify) DIVORCED ☐ Attach necessary documentation such as marriage certificates, all divorce decrees and custody agreements, or separation agreements.	9. DO YOU HAVE REASON TO BELIEVE THAT THE OFFICER WAS MARRIED AT ANY TIME TO ANYONE ELSE? YES ☐ NO ☐ UNKNOWN ☐ If yes, please list number of marriages and submit documents to show dissolution of prior marriages, such as death certificates or divorce decrees. _____ 9a. List number of times surviving spouse was previously married. _____	10. DO YOU HAVE REASON TO BELIEVE THAT THE OFFICER HAD A CHILD(REN) FROM A PREVIOUS MARRIAGE OR RELATIONSHIP? YES ☐ NO ☐ If yes, include in Part II or explain on a separate sheet of paper and attach to this form.

PART II SURVIVING CHILDREN INFORMATION

If the officer was survived by a natural, out-of-wedlock, adopted or posthumous child, or stepchild (or children) at the time of death, complete this part. All surviving children should be listed regardless of age or dependency status at the time of the officer's death. Attach a certified copy of birth certificates, adoption papers, DNA results, or other evidence of parent-child relation, as appropriate.

11. NAME (Last, First, Middle Initial)	Date of Birth	Social Security No.	If over 18, educational status at the time of parent's death	Marital Status regardless of age
			Full-Time ☐ Part-Time ☐ N/A ☐	Married ☐ Single ☐

Address (if different from item 7, above) and Telephone Number	PARENT OR LEGAL GUARDIAN NAME & SOCIAL SECURITY NUMBER

PART II CONTINUED				
11. NAME (Last, First, Middle Initial)	Date of Birth	Social Security No.	If over 18, educational status at the time of parent's death	Marital Status regardless of age
			Full-Time ◻ Part-Time ◻ N/A ◻	Married ◻ Single ◻
Address (if different from item 7, above) and Telephone Number		PARENT OR LEGAL GUARDIAN NAME & SOCIAL SECURITY NUMBER		
11. NAME (Last, First, Middle Initial)	Date of Birth	Social Security No.	If over 18, educational status at the time of parent's death	Marital Status regardless of age
			Full-Time ◻ Part-Time ◻ N/A ◻	Married ◻ Single ◻
Address (if different from item 7, above) and Telephone Number		PARENT OR LEGAL GUARDIAN NAME & SOCIAL SECURITY NUMBER		
11. NAME (Last, First, Middle Initial)	Date of Birth	Social Security No.	If over 18, educational status at the time of parent's death	Marital Status regardless of age
			Full-Time ◻ Part-Time ◻ N/A ◻	Married ◻ Single ◻
Address (if different from item 7, above) and Telephone Number		PARENT OR LEGAL GUARDIAN NAME & SOCIAL SECURITY NUMBER		

Please attach a separate sheet of paper if there are additional children.

PART III

STATEMENTS AND CLAIM: All claimants are required to complete this Part. The purpose of this claim is to establish survivorship eligibility and assert the rights to benefits under the Omnibus Crime Control and Safe Streets Act of 1968, as amended (42. U.S.C. 3796). The filing of this claim does not constitute a determination by the Department of Justice that benefits will or will not be awarded to the claimant(s).

This claim may be prepared by a person acting on behalf of the claimant(s) such as a parent, legally appointed guardian, other legal representatives, or duly designated representatives of the claimant(s). Evidence of authority to represent claimant(s) should be attached.

A. STATEMENT ON OTHER CLAIMS FILED WITH THE UNITED STATES GOVERNMENT AND/OR THE DISTRICT OF COLUMBIA:
Has claim been filed for benefits under
(1) Federal Employees Compensation Act, Section 8191 title 5, U.S. Code? YES ◻ NO ◻
(2) D.C. Retirement and Disability Act of September 1, 1916, Section 4-622? YES ◻ NO ◻

B. STATEMENT OF FINANCIAL NEED: If an immediate financial hardship has been incurred as a result of this death, an interim payment of $3000 may be made. If you are experiencing an immediate financial hardship, please attach a statement of financial circumstances and need. This statement must include all financial responsibility, all benefits that you are eligible for, and the benefits that you have received to date. If all documents required to complete this claim are received an interim payment may not be necessary.

This form will be used by the Department of Justice to determine eligibility of a claimant for paying death benefits. The information may be disclosed to Federal, State, and local agencies to verify eligibility for benefits. We must have Social Security Numbers to process payments.

I certify that the above information is correct and complete to the best of my knowledge. I certify further that I am not aware of any potential claimant for this PSOB death benefit other than those listed above. I know of no facts or circumstances that would render the above-listed persons ineligible for this benefit. I understand that a false or incomplete statement or a failure to fully disclose pertinent information concerning this claim may be grounds for non-payment of benefits or for prosecution for a false statement under 18 U.S.C. § 1001.

All the information you give will be considered in reviewing the claim and is subject to investigation.

SIGNATURE OF CLAIMANT OR AUTHORIZED REPRESENTATIVE (If representative, provide claimant's affidavit granting power of attorney)		DATE
		E-MAIL (If available)
Home number. (Including Area Code)	Work number (Including Area Code)	Alternate number (Including Area Code)

Public Reporting Burden

Paper Reduction Act Notice. Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and that impose the least possible burden on you to provide us with information. The estimated average time to complete and file this application is 90 minutes per application. If you have comments regarding the accuracy of this claim, or suggestions for making this claim form simpler, you can write to the Public Safety Officers' Benefits Program, Bureau of Justice Assistance, 810 7th Street, NW, Washington, D.C. 20531 and to the Office of Information and Regulatory Affairs, Office or Management and Budget, Washington, D.C. 20530.

APPROVED: OMB NO. 1121-0025
EXPIRES: 04/30/2007

U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS
BUREAU OF JUSTICE ASSISTANCE
PUBLIC SAFETY OFFICERS BENEFITS PROGRAM
WASHINGTON, D.C. 20531

REPORT OF PUBLIC SAFETY OFFICER'S DEATH

FOR DOJ USE ONLY

CASE NUMBER _____

DATE RECEIVED _____

This information is being requested pursuant to the Omnibus Crime Control and Safe Streets Act of 1968, as amended (42 U.S.C. 3796), and the disclosure is voluntary. This form will be used by the Department of Justice to determine eligibility of a claimant for the payment of benefit and the information may be disclosed to Federal, State and local agencies to verify eligibility for benefits. Disclosure of an individual's Social Security number is mandatory. Failure to supply requested information may result in a delay in processing this form and receipt of benefits. **PLEASE PRINT CLEARLY OR TYPE.**

1. NAME OF OFFICER (Last, First, Middle)	2. OFFICER'S TITLE

3. SOCIAL SECURITY NUMBER	4. DATE OF INJURY	5. DATE OF DEATH

6. NAME AND PHYSICAL ADDRESS OF EMPLOYING AGENCY, ORGANIZATION OR UNIT IN WHOSE SERVICE DEATH OCCURRED (Include zip code)

PART I: NOTICE OF LINE OF DUTY DEATH OF PUBLIC SAFETY OFFICER

7. AT THE TIME OF INJURY THAT RESULTED IN DEATH WAS THE OFFICER WORKING A REGULAR SHIFT OR AN ASSIGNED OVERTIME SHIFT? YES ☐ NO ☐

IF NO, ATTACH AN AFFIDAVIT EXPLAINING THE OFFICER'S DUTY STATUS.

AS A		IN THE SERVICE OF	
LAW ENFORCEMENT	☐	STATE GOVERNMENT	☐
CORRECTIONS OFFICER	☐	LOCAL UNIT OF GOVERNMENT	☐
PROBATION OFFICER	☐	FEDERAL GOVERNMENT	☐
PAROLE OFFICER	☐	LEGALLY ORGANIZED VOLUNTEER FIRE, AMBULANCE OR RESCUE SQUAD, DEPARTMENT	
FIRE FIGHTER	☐	ORGANIZED, CHARTED OR FORMED BY A PUBLIC AGENCY TO ACT ON ITS BEHALF	
JUDICIAL OFFICER	☐	IN PROVIDING FIRE OR RESCUE SERVICES TO THE PUBLIC	☐
AMBULANCE AND RESCUE SQUAD MEMBER	☐		
OTHER (Specify)	☐	OTHER (Specify)	☐

8. OFFICER'S EMPLOYMENT STATUS WHEN INJURY OCCURRED.

FULL-TIME	☐
PART-TIME	☐
VOLUNTEER	☐
OTHER	☐

9. WAS INJURY CONTRIBUTED BY:

	YES	NO	UNKNOWN
OFFICER'S GROSS NEGLIGENCE?	☐	☐	☐
OFFICER'S INTENTIONAL MISCONDUCT?	☐	☐	☐
OFFICER'S INTENT TO BRING ABOUT HIS OWN DEATH?	☐	☐	☐
OFFICER'S VOLUNTARY INTOXICATION?	☐	☐	☐
ANY PERSON WHO MAY BE ENTITLED TO BENEFIT?	☐	☐	☐

(Attach explanations for any "yes" answer.)

PART II: INFORMATION CONCERNING POSSIBLE CLAIMANTS: Provision of this information does not constitute a finding for or against an interim Payment of Benefits or Final Award of Benefits. If the officer was not married at the time of his death, but was cohabiting with another person in what could be construed as a common-law marriage, please indicate that relationship below.

10. NAMES, RELATIONSHIP, AND ADDRESS OF PERSONS IN PRECEDENCE ORDER AND APPLICABILITY CATEGORY AS FOLLOWS:

SURVIVING SPOUSE OR COHABITANT	

NAME (Last, First, Middle)	SOCIAL SECURITY NO.

MAILING ADDRESS (Include zip code)

PART II CONTINUED

CHILDREN: NATURAL, ADOPTED, STEPCHILDREN, POSTHUMOUS, OUT OF WEDLOCK, REGARDLESS OF AGE OR DEPENDENCY STATUS			
10a. NAME (Last, First, Middle)	DATE OF BIRTH	SOCIAL SECURITY NO.	Marital status regardless of age
			Married ☐ Single ☐
Address (if different from item 11, above) and Telephone Number		PARENT OR LEGAL GUARDIAN NAME & SOCIAL SECURITY NUMBER	
10a. NAME (Last, First, Middle)	DATE OF BIRTH	SOCIAL SECURITY NO.	Marital status regardless of age
			Married ☐ Single ☐
Address (if different from item 11, above) and Telephone Number		PARENT OR LEGAL GUARDIAN NAME & SOCIAL SECURITY NUMBER	

Please attach a separate sheet of paper if there are additional children.

10.b IF THE DECEDENT IS SURVIVED BY NEITHER SPOUSE NOR ELIGIBLE CHILDREN, PROVIDE A COPY OF THE OFFICER'S MOST RECENT DEPARTMENTAL LIFE INSURANCE POLICIES, INCLUDING BENEFICIARY DESIGNATION PAGE.
PLEASE NOTE: The decedent's family will be asked to provide the most recent private insurance policies.

BENEFICIARIES:	
NAME (Last, First, Middle)	SOCIAL SECURITY NO.
MAILING ADDRESS (Include zip code)	
NAME (Last, First, Middle)	SOCIAL SECURITY NO.
MAILING ADDRESS (Include zip code)	

PART III: INFORMATION CONCERNING OTHER CLAIMS

11. TO YOUR KNOWLEDGE HAS OR WILL A CLAIM BE FILED FOR BENEFITS UNDER:
A) Federal Employees Compensation Act, Section 8191 title 5, U.S. Code? YES ☐ NO ☐
B) D.C. Retirement and Disability Act of September 1, 1916, Section 4-622? YES ☐ NO ☐

PART IV: CERTIFICATION A false answer to any question in this Statement may be grounds for non-payment of benefits and may be punishable by fine or imprisonment (U.S. Code, Title 18, Sec. 1001). All the information you give will be considered in reviewing the claim and is subject to investigation.

12. EMPLOYING ORGANIZATION - To the best of my knowledge and belief, the above stated information is true and complete.

ORGANIZATION	TYPED NAME & TITLE OF EMPLOYING AGENCY HEAD	SIGNATURE OF EMPLOYING AGENCY HEAD	
ADDRESS (Include zip code)	PHONE NO.	E-MAIL ADDRESS	DATE

13. IS THERE A RETIREMENT/DISABILITY BOARD, WORKERS COMPENSATION BOARD, COURT, OR OTHER ENTITY THAT WILL CONSIDER OR HAS BEEN CONSIDERED THE FACTS OF THIS CASE IN ORDER TO DETERMINE ELIGIBILITY FOR OTHER BENEFITS? YES ☐ NO ☐

14. WAS A FAVORABLE DECISION RENDERED? YES ☐ NO ☐

If "yes," on a separate sheet of paper please give address and telephone number for each entity.

Public Reporting Burden

Paper Reduction Act Notice. Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and that impose the least possible burden on you to provide us with information. The estimated average time to complete and file this application is 2½ hours per application. If you have comments regarding the accuracy of this claim, or suggestions for making this claim form simpler, you can write to the Public Safety Officers' Benefits Program, Bureau of Justice Assistance, 810 7th Street, NW, Washington, D.C. 20531 and to the Office of Information and Regulatory Affairs, Office or Management and Budget, Washington, D.C. 20530.

APPENDIX III: PSOB Program Appeals Process

The PSOB Program provides three levels of appeal for denied claims: Hearing Officer, BJA Director, and judicial. A claimant has 33 days from the date of the notification of determination to appeal a denial decision in writing to the PSOB Office. The BJA Director may grant a waiver of the 33-day response time if the claimant can show why the deadline could not be met.

Hearing Officer

The first level of appeal is to a Hearing Officer who arranges the date, time, and location of a hearing with the claimant. The claimant can present new evidence at this hearing. Once the hearing is completed, the Hearing Officer reviews all case file information and evidence, and then presents a report with an opinion on the claim to the BJA Director and OJP OGC.

BJA Director

Up to 33 days after the claimant is notified that a denial appeal was upheld by the Hearing Officer, the claimant has the right to appeal to the second level, the BJA Director. The BJA Director reviews the case file, any new evidence, consults with OJP OGC, and makes a determination on the appeal.

Judicial

After a claimant has exhausted the administrative levels of appeal, the claimant can appeal judicially to the U.S. Court of Appeals for the Federal Circuit under 28 U.S.C. 1491(a).

APPENDIX IV: Demographics From Completed Hometown Heroes Act Claims

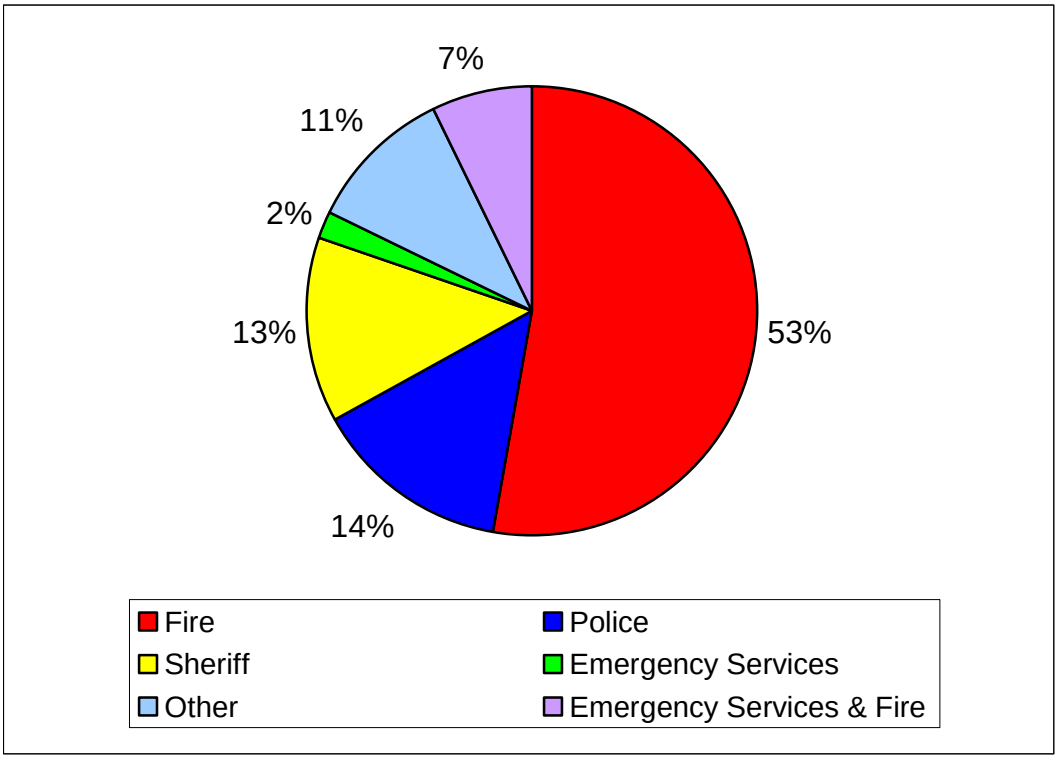
The decedents in the 112 completed claims came from throughout the United States, and the majority worked for fire departments. Table 4 displays demographic information about the decedents and Figure 5 displays the type of public safety agencies in which the decedents worked.

Table 4: Demographics of Completed Hometown Heroes Act Claims as of November 29, 2007

		Number	Percentage
Age of Decedent	Median Age	51	
	Range of Ages	24 - 78	
Gender of Decedent	Male	111	99.1%
	Female	1	0.9%
Cause of Death	Heart Attack	105	93.8%
	Stroke	6	5.4%
	Not Specified	1	0.9%

Source: PSOB claims determinations

Figure 5: Types of Public Safety Agencies From Completed Hometown Heroes Act Claims as of November 29, 2007



Note: The "Other" category includes agencies such as the National Park Service, corrections systems, and local wildlife departments.

Source: PSOB claims determinations

APPENDIX V: Staffing for the PSOB Program

Table 5: Staffing and Duties for the PSOB Office and Office of General Counsel as of September 30, 2007

	Position	On-Board Staff	Number of On-Board Staff Reviewing Claims (Hometown Heroes Act)	Duties
PSOB Office	Director	1	1	(1) Manages the PSOB Program and staff; (2) Reviews all case files and may edit draft determinations before they are sent to OGC for legal review; (3) Presents information about the PSOB Program in various public safety forums and communicates directly with claimants if they ask to speak to her or make a complaint; and (4) Acts as the Chief of Staff/Deputy Counsel for the BJA Director (estimates that 60 to 70 percent of time is devoted to the PSOB Program).
	Senior Benefits Specialist	3	3	(1) Performs the same duties as the Benefits Specialists; and (2) Reviews case files and may edit the draft determinations prepared by the Benefits Specialists or fellow Senior Benefits Specialists.
	Benefits Specialist	3	1	(1) Reviews claim applications and identifies any missing documentation or forms; (2) Contacts claimants and public safety agencies to request information and documents; (3) Analyzes the documentation to make a provisional determination on claims; and (4) Drafts determinations explaining the facts of the cases and reasoning for their decisions.
	Paralegal Specialist	1	0	Works exclusively on appealed PSOB claims and arranges claimant hearings, tracks appeals, and acts as a liaison between the BJA and the contractor Hearing Officers.
	Administrative Assistant - Control Desk	1	0	(1) Logs every new claim application into a PSOB database; (2) Assigns a claim number; and (3) Places the application into a case file.

	Position	On-Board Staff	Number of On-Board Staff Reviewing Claims (Hometown Heroes Act)	Duties
Office of the General Counsel	General Counsel	1	1	(1) Oversees and manages OGC; and (2) May review claims or offer legal advice to attorneys working on claims.
	Deputy General Counsel	4	2	(1) One Deputy General Counsel spends about 50 percent of her time on the PSOB Program and reviews each PSOB case file after it is reviewed by an attorney and before it is returned to the PSOB Office. (2) A second Deputy General Counsel acts as an advisor to attorneys reviewing PSOB claims and fills in for the other Deputy General Counsel when needed.
	Staff Attorney	16	11	(1) Reviews all types of PSOB claims, including death claims filed under the Hometown Heroes Act; (2) Edits draft determinations prepared by the PSOB Office; and (3) Requests additional documentation from the claimant through the PSOB Office. (Staff attorneys estimate that they spend 20 to 40 percent of their time reviewing PSOB claims.)
	Contract Attorney	1	1	Conducts the same duties as staff attorneys but works full time on Hometown Heroes Act claims.
	Paralegal Specialist	2	0	(1) Logs all PSOB case files in and out of the office; (2) Assigns claims to attorneys; and (3) Sometimes acts as a legal advisor to Hearing Officers during the appeal process. (4) Only one Paralegal Specialist is assigned to the PSOB Program.
Contract Pathologist	Pathologist	1	1	(1) Reviews the autopsy report, toxicology report, and any medical records from the decedent's physicians; (2) Responds to a list of questions about the case prepared by OJP OGC; and (3) Prepares a report on the claim for OJP.

APPENDIX VI: Factors That Affected the Update of the PSOB Program Regulations

The implementing regulations for the Hometown Heroes Act became effective on September 11, 2006 – 2 years and 9 months after the Act's enactment on December 15, 2003. In addition to the time consumed by the effort to define the terms "nonroutine stressful or strenuous physical activity" and "competent medical evidence to the contrary" (discussed in the Background section of the report), OJP's General Counsel told us that three other significant factors contributed to the time it took to revise the program regulations.

Extensive Revision of PSOB Program Regulations

The OJP General Counsel told us that he reviewed the original PSOB Program regulations that were issued in 1977 and determined that they needed to be completely rewritten because (1) Congress had passed at least 18 amendments to the PSOB Act, creating inconsistent and conflicting statutory language; (2) the original regulations were convoluted, excessively wordy, and often just repeated the statute as opposed to expanding on the legislation; and (3) the Hometown Heroes Act introduced criteria that could not be incorporated into the existing language of the regulation. The General Counsel estimated that incorporating the necessary changes into the original program regulations required 95 percent of the language to be revised, which contributed to the time it took OJP to issue revised regulations.

Review Process for Proposed and Final Regulations

In November 2004, OJP OGC began discussions with the Department's Office of Legal Policy to determine if the Office of Management and Budget (OMB) would approve issuing an interim final rule for the PSOB Program so that OJP could start processing the claims it had received under the Hometown Heroes Act before the final regulations were issued.[49] In January 2005, OGC sent a memorandum to the Office of Legal Policy that presented the argument for publishing an interim final rule. The Office of Legal Policy and OJP OGC discussed the issue and decided that OMB would not likely approve an exemption

[49] An interim final rule is the issuance of a final rule (also called regulations) without prior notice and comment, but with a post-promulgation opportunity for comment. An agency then could revise the rule in the future based on the comments. This type of rulemaking allows the agency to issue a rule quickly.

to the public notice and comment requirements of the federal rulemaking process. OJP decided to not request an interim final rule from OMB and to proceed with the slower process of issuing proposed and final rules. The Department's review of OJP's proposed PSOB regulations took a little over a month, and the subsequent OMB review took almost 3 months.[50] For the final regulations, the Department's and OMB's reviews took the same amount of time as the reviews of the proposed regulations. Overall, the Office of Legal Policy and OMB reviews added approximately 8 months to the regulatory process.

2006 Legislation and Court Decisions

The General Counsel told us that he postponed completion of the final regulations for the PSOB Program because forthcoming new legislation and court decisions would affect the program and the proposed regulations had to be revised to reflect these developments. In September 2005, the House of Representatives passed the *Department of Justice Reauthorization Act*, which contained new amendments to the PSOB Act. Because it appeared likely that the law would be enacted before the end of that year, OJP OGC decided to wait to issue the PSOB Program regulations until the law was passed and signed by the President. That occurred in January 2006. The law made several modifications to definitions within the PSOB Act and required OJP to change and clarify the final regulations. In addition to the legislation, two U.S. Court of Federal Claims decisions issued on July 27, 2006, and August 2, 2006, changed other definitions in the regulations and required OJP OGC to amend the preamble to the final rule.[51]

[50] The *Administrative Procedures Act* requires that new or updated regulations be reviewed and approved by both the agency promulgating them and by OMB before the regulations are published in either proposed or final form.

[51] *LaBare* v. *United States,* 72 Fed. Cl. 111 (2006), and *Groff* v. *United States,* 72 Fed. Cl. 68 (2006).

APPENDIX VII: Public Safety Officers' Activities as Described in Claim Determinations

As of November 29, 2007, OJP had made a total of 112 claim determinations, of which 47 were approvals and 65 were denials. Fifty-five of the 65 denied claims were denied because of a lack of evidence to demonstrate the decedents engaged in "nonroutine stressful or strenuous physical activity" as required by the Hometown Heroes Act. The following table summarizes the 55 public safety officers' on-duty activities prior to their heart attack or stroke as listed in claims determinations and categorizes the activities by "reason for denial." The remaining 10 of the 65 total denied claims are not included in the table because these claims were denied based on other eligibility requirements that did not require OJP to consider the nature of the officers' activities.

Table 6: Public Safety Officers' Activities in Denied Claims

Reason for Denial	Activities
The public safety officer conducted administrative duties only.	**Claim 1:** • Conducted administrative duties and attended meetings during his shift • During the last meeting, made a presentation and appeared to be short of breath • After the meeting was over he returned home where he experienced shortness of breath and complained of chest pain and was transported to the hospital • Not on duty the day before
	Claim 2: • Worked a regular shift involving only administrative duties • Did not engage in any strenuous activity and died the following morning
	Claim 3: • Attended a short meeting while on duty • Returned to his office and resumed his daily tasks • Yelled to the secretary that something was wrong and that he could not see • Emergency medical responders stated that it appeared he was having a stroke

Reason for Denial	Activities
The public safety officer conducted administrative duties only.	**Claim 4:** • Attending a shift briefing when he fell to the floor, hit his head, shook, and had difficulty breathing • Had only conducted administrative duties in the 24 hours prior to the heart attack
	Claim 5: • Conducted administrative duties as a member of the warrant squad • Logged new warrants and criminal summons, updated the database for warrants, and served three summonses, which involved driving to residences and having individuals sign forms • Had approved leave to work as uniformed security at a bank that night • Started work back at the station at 4 a.m. the next day and told others that he was going to focus on paperwork all day • Not seen after 4:30 a.m. and was found dead approximately 16 hours later at 8:45 p.m. that evening
	Claim 6: • Conducted administrative duties and did not respond to any calls for service in the 24 hours prior to his death
The public safety officer did not respond to a call and was not engaged in fire suppression or a situation, a rescue or a police emergency or response.	**Claim 7:** • Received no calls during the day • Examined gear, conducted house duties, and engaged in physical fitness • Heard lifting weights and was later found unconscious next to the rowing machine
	Claim 8: • Reported to work after having several days off • Under some stress because of possible evidence irregularities • Discussed the issue with a co-worker, became agitated over the situation, and made several related phone calls • May have felt ill, went home, and later collapsed

Reason for Denial	Activities
The public safety officer did not respond to a call and was not engaged in fire suppression or a situation, a rescue or a police emergency or response.	**Claim 9:** • Worked as a crew leader assisting citizens clearing land and chipping to reduce the fuel load in case of a wildfire • Activity was regularly provided to residents and did not involve a high level of physical exertion • Fell to his knees and lost consciousness while feeding trees into the chipper • No other activities or training prior to the clearing and chipping
	Claim 10: • Completed a walk test required by the department consisting of walking 1 mile in 16 minutes or less • Completed the test in a little over 14 minutes and remarked that the test was taxing • Went home and collapsed • No other firefighter-related activity 48 hours prior to his death
	Claim 11: • Last shift started at 7 a.m. and ended 24 hours later • No calls for assistance during the shift and no activity other than an attempt to stop a fire hydrant from leaking • Conducted weight lifting and a treadmill workout during his shift • Stated that he was feeling ill and at home later that evening he had chest pains, trouble breathing, and lost consciousness
	Claim 12: • Performed general maintenance and inspected the building and department vehicles • Had complained of pain below the rib area when he arrived, but later said he felt fine • Took a break at 11 a.m. and was found shortly after slumped over on a couch • Had performed the same activities when on duty the day before

Reason for Denial	Activities
The public safety officer did not respond to a call and was not engaged in fire suppression or a situation, a rescue or a police emergency or response.	**Claim 13:** • Part of a team inspecting a motorcycle outlet • Inspection involved examining every motorcycle including its parts to determine if they had been tampered with or stolen and examining all paperwork associated with each motorcycle • Seized seven motorcycles • Had a heart attack the next day while off duty and conducting yard work • Engaged in no other law enforcement activity within the 24-hour period prior to his death
	Claim 14: • Helped prepare the agency fire vehicles for a fellow firefighter's funeral • Served as part of the honor guard and attended the wake • Next morning, he went to his regular place of employment at 5 a.m. • Made a stop at a local store on his way to the fire station that evening and collapsed in the store parking lot
	Claim 15: • Marched and played a bass drum during a parade representing the department • Stepped away from the procession and sat down on the porch of a residence • Got up to walk to a nearby ambulance and collapsed
	Claim 16: • Was on call the evening before and day of his heart attack • Covered the station for short periods of time while other officers responded to calls • Attended the department's board of trustees meeting and was chatting with other members at the apparatus bay after the meeting when he began to feel ill and was transported to the hospital

Reason for Denial	Activities
The public safety officer did not respond to a call and was not engaged in fire suppression or a situation, a rescue, or a police emergency or response.	**Claim 17:** • Worked an overtime shift with no alarms • Called to cover the station 11 hours after finishing his shift because of an emergency natural gas odor response – he did not respond to calls • Later participated in a basketball game and had a heart attack while sitting on a bench
	Claim 18: • Worked on morning maintenance on the station's three trucks with another firefighter • This included a daily inspection of all equipment and apparatus, including removing and testing equipment • Transported two smoke detectors to another station so they could be installed at a residence • Returned and advised other firefighters that they needed to clean both vehicles • Stated that he would drive one of the vehicles up the road to blow off some water and had a heart attack and veered off the road as he was driving back
	Claim 19: • Worked a normal 10-hour shift • Participated in union contract negotiations throughout the day • Did not respond to any emergency calls within 24 hours of the heart attack • Called the fire station from home indicating he was in medical distress and was transported to the hospital
	Claim 20: • Was on the way to the station when call was canceled • Assigned as standby at the station when another call came in for a refuse fire • Complained of feeling ill to his wife in the evening and found unresponsive in bed the next morning

Reason for Denial	Activities
The public safety officer did not respond to a call and was not engaged in fire suppression or a situation, a rescue, or a police emergency or response.	**Claim 21:** • Unloaded bingo supplies at the station prior to working the department's weekly fundraiser • Complained of a severe headache, sat down on a truck, and was then loaded into an ambulance • No calls for service in the 24 hours prior to the stroke
The public safety officer conducted regular correctional duties.	**Claim 22:** • Worked 16 hours at a correctional facility • Assisted with food service and a pill call, made rounds, and worked the tunnel and industries • Died the next day at home
	Claim 23: • Engaged in routine activities, including searching and escorting prisoners and other related duties • Suffered a heart attack while driving home at the end of his shift
The public safety officer conducted a regular patrol or traffic stop.	**Claim 24:** • Last two shifts were routine, and he engaged in usual road and foot patrol activities on his last shift • Next day began showing signs of cardiac stress while talking to co-workers
	Claim 25: • Conducted regular patrol checks and responded to reports of a couple arguing and teenage skate borders and bicyclists on campus property while on duty • Later collapsed while watching a training video
	Claim 26: • Responded to two calls in the 24 hours prior to his heart attack, one to assist and one in response to a report that a vehicle's back window had been shattered • Approximately a week earlier, he had reported feeling dizzy during a routine traffic stop
	Claim 27: • Felt ill after completing a traffic stop on a routine patrol • Asked his partner to drive him back to the station and later to pull over so that he could remove his vest to breathe easier • Stepped out of the vehicle and collapsed •

Reason for Denial	Activities
The training was not nonroutine and stressful or strenuous.	**Claim 28:** • Participated in a training drill that included donning personal protective equipment and lifting and checking breathing equipment • Each apparatus weighed roughly 30 pounds • Had a heart attack after returning home
	Claim 29: • Started his shift early at approximately 3:30 p.m. to participate in physical training • Suffered a heart attack at approximately 4:15 p.m. the same day • Day before his death had been scheduled as a day off, but he helped escort property technicians from one city to a neighboring city and then returned home
	Claim 30: • Had passed his physical exam and was certified to attend the mandatory basic training academy • Engaged in warm-up exercises and then an indoor diagnostic run – during the 12th and final lap of the run, he collapsed
	Claim 31: • Drove to various addresses within the fire district as part of map training • In the afternoon, participated in pump operation training, but his activities were limited to checking the medical equipment and evaluating an electrical problem on the pumper • Later, did some yard work, ate a meal, and watched TV before having a heart attack
	Claim 32: • Attended an EMT assessment class • Given instruction on lifting and moving patients and practiced CPR on mannequins • Went home after the class and went to bed • At 6 a.m. the following morning, he was gasping for breath

Reason for Denial	Activities
The training was not nonroutine and stressful or strenuous.	**Claim 33:** • Traveled to attend training • Morning consisted of classroom training • Afternoon was reserved for networking where participants were encouraged to engage in physical activity and the officer took a hike with others • Collapsed on the trail
	Claim 34: • Participating in a class at a correctional facility • Collapsed while attempting to plug in a fan behind some training mats
The public safety officer prepared and tested a fire maze.	**Claim 35:** • Prepared and tested a fire training maze • Conducted trial run of the maze and then collapsed upon completion
The public safety officer observed participants in a training session.	**Claim 36:** • Observed new hire testing on Saturday • Helped set up several testing stations and visited stations to check on participant performance • Only one call occurred over the weekend and he did not respond • Following Monday a medical call was dispatched to the officer's residence where he was found in cardiac arrest
The public safety officer had a heart attack or stroke while getting ready to respond to a call or before arriving at the scene.	**Claim 37:** • Reported that he was going to respond to a vehicle accident from his residence using his personal vehicle at 8:29 p.m. • Found unconscious in his vehicle a few minutes later • During the 24 hours prior, worked the 4 p.m. to midnight shift performing administrative duties, manning the volunteer station, and filling out paperwork

Reason for Denial	Activities
The public safety officer had a heart attack or stroke while getting ready to respond to a call or before arriving at the scene.	**Claim 38:** • Received a call concerning a residential fire at approximately 1:00 a.m. • Donned his equipment and collapsed as he was getting into the driver's seat of one of the fire vehicles • Two days before, responded to three calls for service • For two calls, arrived after the other fire vehicles had left, and he was not needed • For the third call, involving a vehicle accident with no injuries, remained there on standby
	Claim 39: • Responded to an explosion and fire in a residence's detached garage that was less than a mile from his home • Collapsed as he was getting out of his car • This is the only work activity that he performed in the 24 hours prior to his death
	Claim 40: • Worked a 24-hour shift that began at 7 a.m. • Engaged in "routine firehouse duties" such as cleaning, studying, and checking the apparatus • Conducted his mandatory physical fitness training by using the running machine • During this activity, station received an alarm • Reported to his truck, but was told he was not needed and collapsed soon after
The public safety officer responded to a call, but did not conduct any activities or actions.	**Claim 41:** • Dispatched from his residence to provide backup • Arrived when the suspect was already in custody and he helped secure the scene, went to breakfast, and then went home • Found a short time later in his bathtub unconscious

Reason for Denial	Activities
The public safety officer responded to a call, but did not conduct any activities or actions.	**Claim 42:** • Attended a training session that involved viewing several police satellite scenarios and discussing law enforcement procedures and policies • After the training, received a call from his wife informing him that an ammonia pipeline break had occurred • Received permission to assist in the operations • Offered assistance at the scene, but none was needed • Returned home and collapsed on the front lawn
	Claim 43: • Responded to an EMS call the evening prior to his death • Other emergency responders were already on the scene, so he left without undertaking any actions • No other calls that day • Suffered a heart attack next day while driving and struck another vehicle when he crossed the center line
The public safety officer responded to a call, but only conducted supervisory duties or no physical activities.	**Claim 44:** • Worked for approximately 3.5 hours conducting supervisory duties related to the set-up and maintenance of a helicopter landing and take-off zone • Inspected the site and drove a truck • Went home at 1:15 p.m. and there were no other calls for his firefighter services that day • Was last seen alive that day at 11 p.m. and an ambulance was called the next morning
	Claim 45: • Worked on a prescribed burn plan and then responded to a wildfire on the day of his heart attack • At the scene, he walked the fire line, observed dozer operations and broadcasted the weather • Later found 45 feet inside the fire line, partially burned and grasping a fire tool • Determined he died of a heart attack before the fire reached his body and had not engaged in any fire suppression activities in the vicinity

Reason for Denial	Activities
The public safety officer responded to a call, but there was no emergency, law enforcement action, or emergency response.	**Claim 46:** • Worked a 12-hour overnight shift • Responded to two calls not requiring police action • Completed the shift at 6 a.m. and that same morning an ambulance was dispatched to his house
	Claim 47: • Participated in normal activities and EMS calls during his 24-hour shift • Conducted an apparatus check, engaged in a patient transfer, transported a patient to the hospital, and possibly took part in physical fitness activity • Assisted with emergency medical care while transporting a patient to the hospital • Not involved in any fire incidents • Suffered a heart attack at the end of his shift
	Claim 48: • Responded to three calls • Two of the calls did not require agency resources • At the third call, he spread absorbent materials to soak up fluids after vehicle accident • Last seen alive that day at 11 p.m. • Found dead in his home the following day in his work clothes
The public safety officer responded to a call, but it was a false alarm or the officer was told to turn around or did not proceed.	**Claim 49:** • Responded to a call regarding a vehicle fire • En route, reported that the smoke was caused by leaking fluids instead of a fire and he returned to his residence • This was the only call during the 24-hour period prior to the heart attack • Next day he went to work at his regular place of employment and then drove to his sister's residence where he felt ill and an ambulance was called

Reason for Denial	Activities
The public safety officer responded to a call, but it was a false alarm or the officer was told to turn around or did not proceed.	**Claim 50:** • Responded in full turnout gear to an alarm that turned out to be a false alarm • Returned to the station, completed some paperwork, spoke with some colleagues, and went to his vehicle to drive home • Found unconscious in the car • Had responded to one other false alarm in the 24 hours prior to his death
	Claim 51: • Began to respond to a call, but as fire engine was leaving the station, he was instructed not to proceed • Once the fire engine returned to the station, he fell out of the driver's side jump seat • Had not been involved in any other response in the 24 hours prior to his heart attack
	Claim 52: • Had a heart attack while driving to his regular job in construction • Responded to only one 911 call the day before regarding the smell of smoke at a residence that was determined to be a false alarm
	Claim 53: • Responded to a call in his personal vehicle, but on the way, all units were advised to return to quarters • Went to a nearby EMS unit and stated that he was experiencing chest and arm pain • Paramedic conducted an EKG, which appeared normal, so the officer returned home and was later found unresponsive
The public safety officer responded to a call, but activities were routine and not stressful or strenuous.	**Claim 54:** • Responded to three medical alarms involving routine activities and one vehicle accident with no injuries during an overnight shift that ended at 7 a.m. • At 2 p.m. that day, he traveled to the local junior high school where he was an assistant coach • Found at approximately 3:10 p.m. collapsed in the gym locker room

Reason for Denial	Activities
The public safety officer responded to a call, but activities were routine and not stressful or strenuous.	**Claim 55:** • Watched television after having returned from several calls that were all documented as routine in nature • Started to have a seizure and then went into cardiac arrest

APPENDIX VIII: The Office of Justice Program's Response

U.S. Department of Justice

Office of Justice Programs

Office of the Assistant Attorney General

Washington, D.C. 20531

MAR 1 8 2008

MEMORANDUM TO: Glenn A. Fine
Inspector General
United States Department of Justice

THROUGH: Paul A. Price
Assistant Inspector General for Evaluation and Inspections

FROM: Jeffrey L. Sedgwick
Acting Assistant Attorney General

SUBJECT: Response to Office of the Inspector General's Draft Report, *The Office of Justice Programs' Implementation of the Hometown Heroes Survivors Benefits Act of 2003*

This memorandum responds to the Draft Report of the Office of the Inspector General (the "OIG") issued on March 5, 2008 (the "OIG Draft Report"), regarding the review of the implementation by the Bureau of Justice Assistance ("BJA") (a component of the Office of Justice Programs ("OJP")) of the Hometown Heroes Survivors Benefits Act of 2003 (the "HHA"), an amendment to the Public Safety Officers' Benefits ("PSOB") Act of 1976. The OIG's May 30, 2007, memorandum to Assistant Attorney General Regina B. Schofield, notifying OJP of the initiation of this review, states that its purpose was "to examine how BJA processes benefits claims from families of deceased public safety officers who died of heart attack and strokes."

Analysis of the OIG Review and Draft Report

The primary focus of the OIG's review was the processing of what it calls "Hometown Heroes Act claims"[1] from September 11, 2006 (the effective date of the

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[1] OIG Draft Report, *passim*. The Report's ubiquitous use of this term is confusing, as legally there is no such thing as a "Hometown Heroes Act claim" or a "claim submitted under the Hometown Heroes Act." The HHA establishes a legal presumption applicable to certain PSOB death-benefit claims made under 42 U.S.C. § 3796(a). Until proper determination is made that the claimant's decedent is "a public safety officer" who has "die[d] as the direct and proximate result of a heart attack or stroke," 42 U.S.C. § 3796(k), the HHA is not even implicated. Once that determination is made (and the provisions of the HHA are implicated), the presumption established by the HHA may or may not be available, depending on the circumstances and supporting evidence presented. cf. 28 C.F.R. § 32.5(a). Thus, it is

(continued...)

current PSOB implementing regulations), through November 29, 2007. Overall, the OIG Draft Report cites three factors as contributing to the length of time required to process these claims: (1) submission (by claimants, or on their behalf) of insufficient supporting evidence and information in nearly all of the claims; (2) the length of time for legal reviews by OJP's Office of the General Counsel ("OGC"); and (3) the delay occasioned by difficulties in securing pathologists to review the claims, as a result of the unexpected unavailability of the Armed Forces Institute of Pathology to review almost any of the claims. The OIG Draft Report also concludes that, although "many of the denials met the intent of the [HHA,]"[2/] OJP "narrowly interpreted the Act for at least 19 of the claims denied during the first year."[3/]

OJP agrees that lack of information and supporting evidence from claimants (or on their behalf) contributed significantly to delays in processing. Overall, the OIG Draft Report accurately describes the problem and many of its apparent causes, and notes many steps that have been (or are soon to be) taken by OJP to address the problem of incomplete submissions by claimants and to reduce claimants' response times to requests for additional information or evidence. OJP will continue taking these and other appropriate actions to address this problem.

OJP also agrees that the delayed medical reviews affected the length of time required to process many of the cases processed during the OIG review period. OJP is pleased that the problem occasioned by the sudden and unanticipated unavailability of

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[1/](...continued)
unclear whether the OIG Draft Report, in referring "Hometown Heroes Act claims," refers consistently to the same thing, and also whether that reference (assuming it to be consistent) is to PSOB death-benefit claims where– (1) the HHA *may* be implicated (*i.e.*, where there is an alleged or apparent heart attack or stroke, or where the claimant's decedent is alleged or appears to be a public safety officer); (2) the HHA actually *is* implicated and the HHA presumption *may* apply; or (3) the HHA presumption actually *does* apply.

[2/] OIG Draft Report at viii. It is unclear what the Report may mean by "the intent" of the HHA. To the extent anything is meant beyond the intent derived by the text of the statute itself, OJP must object. *See, e.g., Hughes Aircraft* v. *Jacobson*, 525 U.S. 432, 438 (1999) ("As in any case of statutory construction, our analysis begins with the language of the statute. And where the statutory language provides a clear answer, it ends there as well.") (internal quotation marks and citations omitted).

[3/] OIG Draft Report at viii. To the extent that the Report questions OJP's substantive interpretation of the HHA itself, such an opinion unquestionably is beyond the scope of the review demarcated in the OIG's May 30, 2007 memorandum, referred to above, and, in any event, appears to be outside the scope of the OIG's authority under 5 U.S.C. app. 3 § 4(a)(3). The use of appropriations for the PSOB program legally is the responsibility of BJA/OJP, *see, e.g.*, 42 U.S.C. § 3796(a); accordingly, substantive interpretations of that program's underlying law itself is consigned in principle to OJP's General Counsel, *see, e.g.*, DOJ Order No. 2110.39A, ¶ 4 (Nov. 15, 1995); 28 C.F.R. § 32.3 (definition of *PSOB Office*); OJP Instruction No. 1310.72B, ¶ 4 (Apr. 4, 2001). If the OIG is asserting that it does have authority to question OJP's substantive interpretations of the laws applicable to the PSOB program, OJP requests a clear statement to that effect, so that it may determine whether to refer this important legal question to the Department's Office of Legal Counsel pursuant to 28 C.F.R. § 0.25(c).

the Armed Forces Institute of Pathology to provide medical advice on almost any further claims, and by the normal federal procurement process thereafter to procure other pathologists' services, has been resolved. As the OIG Draft Report correctly notes, the services of expert contract pathologists were procured in September 2007.

OJP disagrees, however, with the OIG Draft Report's estimates of how much time actually was spent in legal review of the cases, and with the Report's finding that any undue length in the processing of these claims largely was the result of such legal review.

It ought to be neither surprising nor a negative thing that the General Counsel's Office should invest time as needed in conducting its review or in "looking for every possible way to approve a claim."[4/] The OIG Draft Report generally does not account for the reality that, due to inherent legal and factual complexities, some PSOB claims may take what might appear on the outside a circuitous and consequently unnecessary route,[5/] when (in fact) every stop along the way is driven by substantive legal considerations. Because of the particular requirements articulated in the HHA, claims that implicate its provisions well may be far more complicated than claims involving actual line-of-duty injuries. Determination of any PSOB claim involves a constant interplay between the PSOB Office (the fact gatherer) and OGC. Of necessity, this interplay is not a linear process that may be analyzed as a federal grant process might be. Review of PSOB claims require synthesis and analysis of often-complex factual, legal, and medical information; review and critical evaluation of the initial determination as drafted by the PSOB Office (sometimes requiring multiple edits, in accordance with the specific facts uncovered or revealed over the course of the claim process); careful attention to consistency with the PSOB/HHA provisions and prior claims to ensure that decisions are made in a manner that puts fairness to the claimant as a paramount consideration, are consonant with agency precedent, are supported by sufficient evidence, and are not made in an arbitrary and capricious fashion.[6/] Certainly, this is especially true when the agency is determining cases with a new provision of law, containing many terms unknown to the

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[4/] OIG Draft Report at 24.

[5/] The OIG Draft Report appears to miss whole steps in the process, suggesting the presence of a serious conceptual problem. For example, the flowchart on pp.11 - 12 does not capture the fact that the purpose of a request for medical review is not solely to determine whether there was "competent medical evidence to the contrary" that would overcome the presumption of coverage under the HHA. The medical report, rather, is requested to assist in the determination of a whole host of legal issues, including whether the claimant's decedent actually died as the direct and proximate result of heart attack or stroke, whether a concomitant injury may have been a substantial factor in causing the heart attack or stroke, the timing of heart attack or stroke – which at times reveal additional substantive legal issues requiring review and which often require OGC to request additional information or evidence from the claimant or the public agency.

[6/] *See, e.g., Groff* v. *United States*, 493 F..3d 1343, 1349 (Fed. Cir. 2007), cert. *denied*, __ U.S. ___ (2008).

program before the enactment of that provision. But this, unfortunately, is nowhere addressed in the OIG Draft Report.[7/]

Calculation of time for OGC legal review

As a general matter, the validity of the information used in the OIG Draft Report to calculate the "Number of Days OGC Spent Reviewing Claims" (so described in the table on p. 23) is questionable. One clear indication of the incomplete nature of the data is that, despite the OIG Draft Report's discussion of *112* Hometown Heroes determinations, only *95* claims are represented on the bar chart. The chart thus represents only 85% of the claims ostensibly at issue, and the OIG Draft Report itself indicates that the data are incomplete regarding that 85% because (as discussed below) there is no data field that records the dates these claims went into and out of OGC -- which dates are precisely what the bar chart purports to represent.

The Report estimates that the "median" time OGC took to review a claim is 50 days, and that "some reviews [took] more than 180 days."[8/] Later, the Report states that "OGC took, on average, 50 days to review a claim; however these reviews ranged from under 10 days to over 200 days."[9/] The Report finds that claims processing was "slow," but surely what would constitute "slow" processing depends on the standard that serves as the basis of measurement. The only applicable directive that actually *does* set a standard (*i.e.*, the Attorney General's memorandum of May 13, 2004 (referred to on p. 26, note 36, of the OIG Draft Report)) carefully directs a 90-day turnaround time for claims processing by OJP, but only after "receiving all necessary information . . . identifying all potential beneficiaries." Nothing in the OIG Draft Report suggests that this deadline was missed with respect to any "Hometown Heroes Act claim."

The OIG Draft Report derives its estimates of the amount of time that claims supposedly were under legal review, based significantly on "the database that records

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[7/] Evidence of the legal complexities surrounding the PSOB program statutes may be found in the fact that, *during the period under review by the OIG here*, the U.S. Court of Appeals for the Federal Circuit issued four opinions to date relating to PSOB claims (*Groff*, *supra*; *Amber-Messick* ex rel. *Kangas* v. *United States*, 483 F.3d 1316, 1321 (Fed. Cir. 2007), cert. *denied*, __ U.S. ___ (2007); *Cassella* v. *United States*, 469 F.3d 1376, 1381 - 1382 (Fed. Cir. 2006); *Hawkins* v. *United States*, 469 F.3d 993, 999 (Fed. Cir. 2006)); and four opinions relating to PSOB claims were issued by the Court of Federal Claims (*Hillensbeck* v. *United States*, 74 Fed. Cl. 477 (2006); *White* ex rel. *Roberts* v. *United States*, 74 Fed. Cl. 769 (2006) (appeal currently pending in the Federal Circuit); *Dawson* v. *United States*, 75 Fed. Cl. 53 (2007); *Winuk* v. *United States*, 77 Fed. Cl. 207 (2007)).

[8/] OIG Draft Report at iv, 23.

[9/] OIG Draft Report at 22.

activity on claims."[10/] This is puzzling, as the Report itself concedes that "[t]he PSOB Office database does *not* contain separate data fields to record dates that claims are sent to and received from the OGC."[11/] Given the utter absence of any such record of dates, the OIG attempted to "estimate[]" the time period by "extract[ing]" the dates "from the 'notes' section of the database" even though "[t]he 'notes' section did *not* have dates for all the completed claims,"[12/] and even "[]though the notes do *not* always record every action on a claim."[13/] It is difficult to see how, on *this* record (where the data not only are invalid, but are expressly acknowledged to be so), even a plausibly accurate "estimate[]" could be made of the "time the case file was in OGC for review,"[14/] especially as "OGC staff attorneys" do not "use the PSOB Office's new case management system"[15/] (*i.e.*, the database), which thus contains no case-logging information whatsoever from the General Counsel's Office.[16/]

Allegation of unwarranted length of time in processing

The OIG Draft Report attributes allegedly slow review by the Office of the General Counsel to "certain inefficient internal practices,"[17/] such as the assignment of claims "across numerous attorneys."[18/] Based on anecdotal assertions, the OIG Draft Report concludes that such assignment led to requests for "additional documentation and

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[10/] OIG Draft Report at iv; *see also, e.g.*, *id.* at 18 - 23.

[11/] OIG Draft Report at 22 n. 33 (emphasis added).

[12/] OIG Draft Report at 22 n. 33 (emphasis added).

[13/] OIG Draft Report at 19 n. 31 (emphasis added) ("[W]e found that entries *often* included information about such matters as calls from claimants, questions from OGC attorneys, and when the case file was moved in and out of the PSOB Office." (emphasis added)).

[14/] OIG Draft Report at 22 n. 33.

[15/] OIG Draft Report at xii.

[16/] Additionally, the OIG Draft Report nowhere indicates what rule (if any) informed when a note might be made (if it were made at all) that a file was "in OGC for review." The Report states that "[t]he times estimated do not include periods when the case files were returned to the PSOB Office for additional documentation or information," but it fails to address the many instances where the files simply were retained in the Office of the General Counsel pending receipt of "additional documentation or information."

[17/] OIG Draft Report at 23.

[18/] OIG Draft Report at iv.

evidence that was not necessary for making a determination."[19] In addition, the Report opines that OGC's lack of a "formal method of recording information requests in the case files" caused the PSOB Office to receive "duplicative information requests from OGC attorneys" and "numerous inconsistent edits" to be made to draft determinations, adding time to the review process.[20] Lastly, the Report notes that OGC has no specific "timeliness standards" for its attorneys' reviews of PSOB claims.

These allegations relating to assignment, editing, and information requests have little or no factual basis; and the OIG Draft Report does not show how these allegations (even if true, which they are not) led to any delays in processing.

The OGC signature lines on the PSOB Office claim determinations reveal that nearly 75% of the "Hometown Heroes Act claims" processed as of November 29, 2007, were reviewed by *one or the other of two* OGC attorneys, and that four attorneys on staff were responsible for processing 85% of the claims. The remaining 15% were signed by one of six attorneys.[21] Whatever else they may indicate, the data simply do not support a finding of assignment of claims "across numerous attorneys."[22] And still less do they show that the attorney assignments (whatever they were) occasioned any delays in processing.

Nor does anything in the OIG Draft Report adequately support a conclusion that, "in some cases," OGC staff attorneys requested "additional documents [that] were not necessary for making a determination on whether the claim was compensable under the Hometown Heroes Act. For example, documents to establish potential beneficiaries (e.g., birth certificates, marriage license, or divorce decrees) are not needed unless the claim is determined to be compensable."[23] It goes without saying that the denial of a

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[19] OIG Draft Report at 23.

[20] OIG Draft Report at 23.

[21] Absent some strong contraindication, it is the invariable practice of OGC -- as indicated by the log records it maintains -- to track each claim file always back to the same attorney who handled it earlier. Very rarely, different attorneys may be assigned to review the same claim, but only when the legal review otherwise would be unduly delayed (as, for example, might occur when an attorney who first handles the claim goes out on extended leave, or has an unavoidable and sharp increase in workload in connection with other matters he handles).

[22] See the attached bar chart entitled "Percentage of PSOB heart attack or stroke claims per OGC attorney through November 2007."

[23] OIG Draft Report, at 24. The OIG Draft's Report's frequent use of the term "compensation" to describe the PSOB death benefit, OIG Draft Report at 7; *see also, e.g., id.* at I, 2, 24, is confusing. The notion of "compensation" is not legally relevant to the PSOB program, as the payment under the PSOB Act is a legal "'gratuity.'" *Rose* v. *Arkansas State Police*, 479 U.S. 1, 4 (1986) (*per curiam*). As the law of

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claim is a legally-significant event from which appeal rights may flow pursuant to 28 C.F.R. §§ 32.8, .17, and .55. For this reason, properly "identifying all potential beneficiaries" (to use the imperative words of the Attorney General memorandum of May 13, 2004, referred to above), so as to advise them of their legal rights,[24/] is legally necessary, and to have done otherwise would have been legally irresponsible. In short, what may be "necessary" is a legal determination, not a programmatic one, and what may be necessary accordingly will change as interpretations of the law change. Thus, information necessary in certain cases prior to October 2, 2007 (when certain legal presumptions relating to the term "nonroutine" formally were applied to the PSOB program by memorandum of the BJA Director), became legally unnecessary thereafter.[25/] Suffice it here to state that OJP is unaware of instances (except, perhaps, isolated ones) where information or evidence legally "unnecessary" at the time requested may have asked for by any attorney in the Office of the General Counsel in connection with any claims under OIG review.[26/]

[23/](...continued)
gratuity clearly holds, all elements of a claim must be satisfied by a claimant before payment may be made. *Semple* v. *United States*, 24 Ct. Cl. 422 (1889); 36 Op. Att'y Gen. 227 (1930); 16 Op. Att'y Gen. 408 (1879).

[24/] *See, e.g.*, 28 C.F.R. § 32.14(a) (emphases supplied):

> (a) Upon its approving or denying a claim, the PSOB Office *shall* serve notice of the same upon the claimant (*and* upon any other claimant who may have filed a claim with respect to the same public safety officer). In the event of a denial, such notice *shall*—
> (1) *Specify the factual findings and legal conclusions that support it*; and
> (2) *Provide information as to requesting a Hearing Officer determination.*

[25/] The OIG Draft Report , at 24 (emphasis supplied), states that "the OGC attorney sometimes requested additional documents and information, such as a report of the decedent's activities for the 24 hours prior to the heart attack or stroke, even when the claim *did not meet the basic criteria* established by the PSOB Act of the [HHA]." As stated in text above, the determination of whether a claim "meets . . . basic criteria" is a legal one, and the foregoing example itself illustrates this: The reality is that in several cases, the evidence received indicated that during the 24 hours before the onset of acute heart attack or stroke symptoms, the officer was not engaged in a situation (or did not participate in a training exercise) involving any stressful or strenuous physical public safety activity. Until the medical review was complete, however, it was not known, precisely, when the officer's heart attack or stroke actually may have begun. Where there was some indication in the record that the fatal heart attack may actually have started some time before the officer began to feel its acute effects, OGC attorneys sometimes prophylactically requested more information about what the officer may have been doing during a longer period before the heart attack appeared to have begun.

[26/] Closely related to the foregoing allegation is the assertion that OGC "attorneys would review the claim at different times but not keep records of their reviews, which sometimes led to duplicative information requests. In addition, . . . attorneys had no formal method for recording information requests in a case file, so their requests were not documented unless they were noted in the PSOB database by PSOB Office staff members" OIG Draft Report, at 24. This assertion that OGC attorneys "do not keep records" and that their "requests were not documented" is incorrect. The substance of much of their advice,
(continued...)

The final suggestion (that the OGC attorneys made "inconsistent edits" – consisting of unnecessary stylistic changes and frequent changes to standard language) similarly is unsupported by data. The Report correctly quotes the Deputy General Counsel as stating "that she had directed the attorneys to cease editing based on writing style and to focus only on editing that affected the legal issues relating to the claim,"[27] but this direction was given literally years before September 2006, when the first "Hometown Heroes Act claims" were received in the General Counsel's Office for review. Thus, OJP disagrees with the assertion that this particular factor possibly could have affected the processing time for any such claim.[28]

Additional Clarifications

In addition to the foregoing, OJP offers the following comments on certain statements or references in the OIG Draft Report that appear to be mistaken or incomplete.

- On page iii, and elsewhere, the OIG Draft Report describes an October 2, 2007, BJA policy memorandum as indicating that "any response" to an emergency call should be considered "nonroutine." This is an inaccurate description: The policy memorandum creates a rebuttable presumption, specifically by providing that "[r]esponding to an emergency call shall presumptively be treated as nonroutine."

- On page ix, the OIG Draft Report states that "'great physical exertion' [i]s required by the regulations." This term is nowhere found in the PSOB regulations.

- On pages 1 - 2, to the extent the bridge paragraph of the OIG Draft Report is intended to provide an accurate legal description of the HHA provisions, it is abbreviated and conflates several statutory requirements, and thus is inaccurate. For the presumption it establishes to be available, the HHA requires that the

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[26](...continued)
commentary, requests for information, and legal review is kept by the OGC attorneys in electronically-stored media, such as their records of their "e-mail conversations," *id.*, with the PSOB Office.

[27] OIG Draft Report, at 24.

[28] In any event, whether a particular change actually is substantive or merely stylistic is debatable. Certainly, a poorly-framed determination is more problematic than one that is well written. Also, an apparently "stylistic" change that causes a PSOB determination to be framed in terms that more closely approximate terms used in the 91-some court decisions on the PSOB program enables that determination better to withstand attack in litigation than otherwise. These are weighty considerations, given the extensive litigation, indicated above, of PSOB claims in recent years. Additionally, the recent holdings in *Groff*, 493 F.3d at 1350 & n.2, and *Amber-Messick*, 483 F.3d at 1323, that final agency determinations of PSOB claims "have the force of law," make it all the more important that those determinations be clear and accurate, as their effect will be projected onto future claims under the program.

officer have suffered a heart attack or stroke within certain timeframes of engaging in a situation (or participated in a training exercise) that involved nonroutine stressful and strenuous physical public-safety activity, while on duty.

- On page 3, the first sentence of the second full paragraph in the OIG Draft Report is inaccurate. The statutory "criteria for determining whether PSOB claims would be eligible for compensation" are not limited to the two terms ("'nonroutine stressful or strenuous' physical activity" and "competent medical evidence to the contrary") identified in that sentence. The HHA provision, rather, also requires a showing that the officer was "engaged in a situation" involving certain public safety activity or "participated in a training exercise," that such engagement or participation have occurred while he was "on duty," and that the circumstances of his death also meet the timing requirements elaborated at 42 U.S.C. 3796(k)(2).

- The definitions of "nonroutine stressful physical activity"and "nonroutine strenuous physical activity" set out on pages 5 and 6 do not track the language of the regulations and to that extent are erroneous. Also, it appears that the parenthetical phrases included in both terms "nonroutine stressful physical activity"and "nonroutine strenuous physical activity" may have been intended to incorporate notions that inform a BJA policy memorandum of October 2, 2007, regarding the determination of what may be "nonroutine." That memorandum does not purport to create a "definition" of "nonroutine," however (contrary to the implication of the OIG Draft Report's phrase "routine means . . . " contained in the parentheticals). The memorandum, rather, provides *guidance* on how to evaluate evidence relating to whether an activity may be nonroutine, stating that the "'routineness' should be informed less by the frequency with which it may be performed than by its stressful and strenuous character."

- On page 6, the discussion of "Competent Medical Evidence to the Contrary" states that OJP consulted with the Armed Forces Institute of Pathology to help define the term and develop determination criteria. Although this statement is true, insofar as it goes, it is incomplete in that OJP also consulted extensively with other medical-, public safety- and vocational experts.

- The description of the "PSOB Program beneficiary hierarchy" in note 24 on page 8 and the citation to the Mychal Judge Act is erroneous. The Department of Justice Appropriations Authorization Act of 2005[29/] significantly amended the Mychal Judge Act provisions in the PSOB Act. Those provisions (as so

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29/ Pub. L. No. 109-162, § 1164(d), 119 Stat. 2960, 3120 (2006).

amended) are codified at 42 U.S.C. § 3796(a)(4); in any event, the statutory order of death beneficiaries currently is as follows:

(1) if there is no surviving child of such officer, to the surviving spouse of such officer;
(2) if there is a surviving child or children and a surviving spouse, one-half to the surviving child or children of such officer in equal shares and one-half to the surviving spouse;
(3) if there is no surviving spouse, to the child or children of such officer in equal shares;
(4) if there is no surviving spouse or surviving child—
(A) in the case of a claim made on or after the date that is 90 days after [January 5, 2006], to the individual designated by such officer as beneficiary under this section in such officer's most recently executed designation of beneficiary on file at the time of death with such officer's public safety agency, organization, or unit, provided that such individual survived such officer; or
(B) if there is no individual qualifying under subparagraph (A), to the individual designated by such officer as beneficiary under such officer's most recently executed life insurance policy on file at the time of death with such officer's public safety agency, organization, or unit, provided that such individual survived such officer; or
(5) if none of the above, to the parent or parents of such officer in equal shares.

- To the extent that the second paragraph on page 9 of the OIG Draft Report suggests that a claimant "has the opportunity to present new or additional evidence" only "[d]uring a hearing," it is inaccurate. At each level of administrative appeal, the claimant has the opportunity to provide additional evidence and argument.[30/]

- The OIG Draft Report, on page 47 (*i.e.*, at Appendix III), states that "After a claimant has exhausted the administrative levels of appeal, the claimant can appeal judicially to the U.S. Court of Federal Claims under 28 U.S.C. 1491(a). Pursuant to the Department of Justice Appropriations Act, 2008,[31/] signed into law on December 26, 2007, PSOB appeals no longer lie in the Court of Federal

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[30/] *See, e.g.*, 28 C.F.R. § 32.52(b); *Groff*, 493 Fed.3d at 1352.

[31/] Pub. L. No. 110-161, § 6, div. B, tit. II (Public Safety Officers Benefits proviso), 121 Stat. 1844, 1912 (2007).

Claims, "exclusive jurisdiction" to hear such appeals being given by that statute, instead, to "the Court of Appeals for the Federal Circuit."[32/]

Response to Recommendations

The OIG Draft Report contains three recommendations. For ease of reference, each of the three recommendations is restated below in **bolded text**, followed by OJP's response to the recommendation.

1. **The BJA should finalize and issue the "Attorney General's Guide to the Hometown Heroes Act."**

   The BJA will work with the Department of Justice to finalize "The Attorney General's Guide to the Hometown Heroes Act."

2. **OJP OGC staff attorneys should be required to use the PSOB Office's new case management system to record their case notes, requests for documentation, and other case-related communications with the PSOB Office.**

   The PSOB Office's case management system, which is designed to record certain activities related to PSOB cases, still is under development. When the system is sufficiently developed and operational such as to allow the participation of the Office of the General Counsel and to capture edits and changes to PSOB Office- and Director determinations, the staff attorneys from the Office of the General Counsel, and the PSOB Office, will use the system.

3. **OJP OGC should establish definitive performance timelines for attorneys' reviews of the PSOB claims to facilitate claims processing.**

   Further to the 90-day deadline required by the Attorney General memorandum of May 13, 2004, the PSOB Office, within 30 days of receipt of all necessary information and identification of all potential beneficiaries on a PSOB claim, will send a draft PSOB Office determination on the claim, as well as the complete claim file, to the Office of the General Counsel for legal review; the Office of the General Counsel, within 45 days of receipt of a complete PSOB claim file (containing a draft PSOB Office determination and all necessary information and identification of all potential beneficiaries), will complete its review and forward its recommendations to the PSOB Office for execution.

[32/] OJP acknowledges that 28 C.F.R. § 32.55(a), which (when promulgated) correctly stated the law (and which may have been the source of the statement in the OIG Draft Report), no longer (*i.e.*, since last December 26th) is accurate and should be amended promptly so as to avoid sowing confusion among claimants or their representatives.

cc: Beth McGarry
Deputy Assistant Attorney General
for Operations and Management

Domingo S. Herraiz
Director
Bureau of Justice Assistance

Hope Janke
Counsel to the Director
Bureau of Justice Assistance

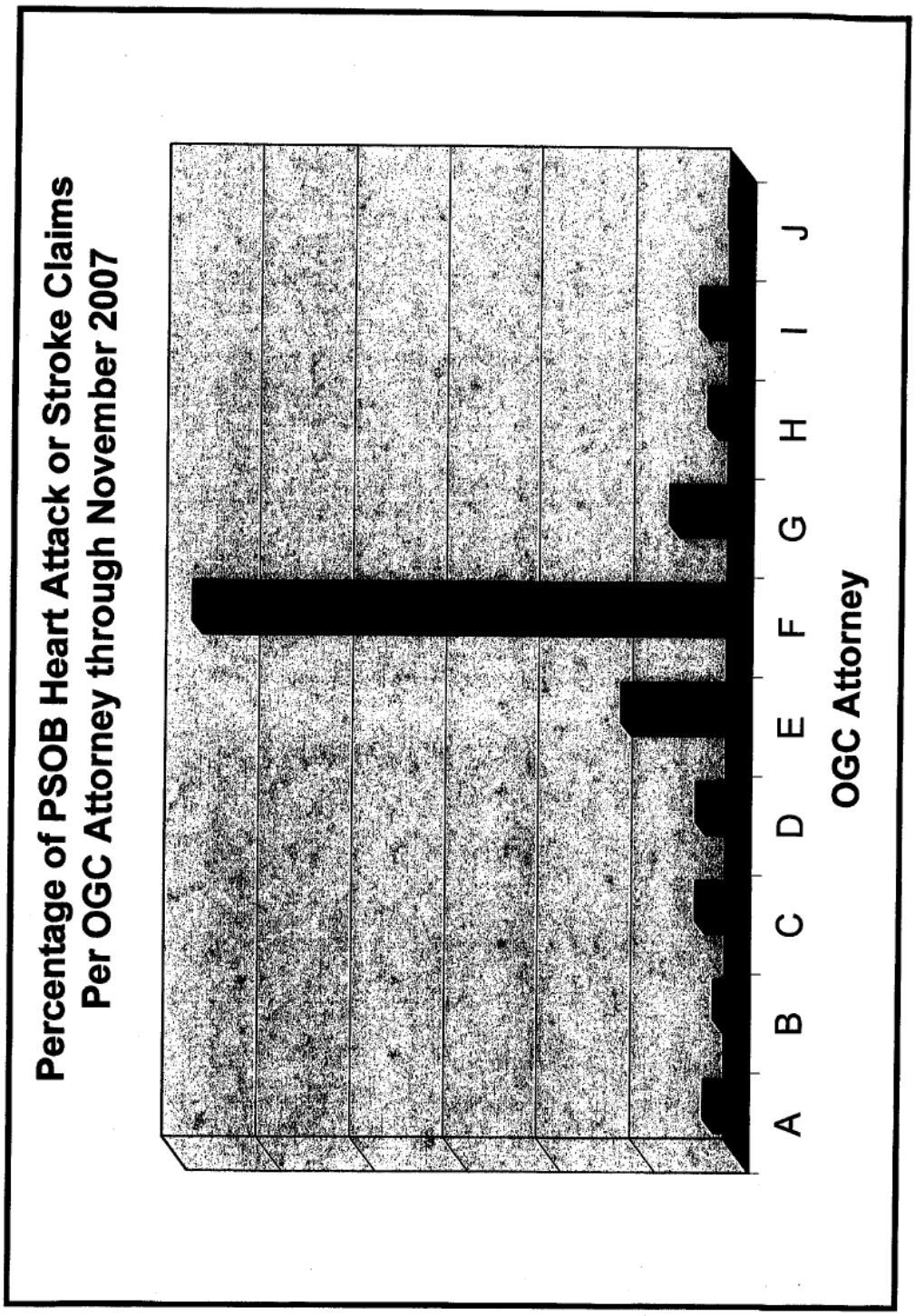
Marcia K. Paull
Chief Financial Officer

Rafael Madan
General Counsel

LeToya A. Johnson
Deputy Director, Audit and Review Division
Office of Audit, Assessment, and Management

Richard A. Theis
Assistant Director, Audit Liaison Group
Justice Management Division

ATTACHMENT


Percentage of PSOB Heart Attack or Stroke Claims
Per OGC Attorney through November 2007
A
B
C
D
E
F
G
H
I
J
OGC Attorney

APPENDIX IX: OIG's Analysis of the Office of Justice Program's Response

On March 5, 2008, the OIG sent a draft of this report to the Office of Justice Programs (OJP) with a request for written comments. OJP responded to the OIG in a memorandum dated March 18, 2008. The OJP response (Appendix VIII of this report) included comments on the findings of the OIG report, a list of statements in the OIG report that OJP claimed are "mistaken or incomplete," and OJP's specific responses to the recommendations.

Although the OJP written response did not explicitly state concurrence or non-concurrence with the recommendations, on March 19, 2008, the OJP liaison confirmed that OJP agreed with all the recommendations. Further, the OJP written response provides its planned actions for implementing all the OIG's recommendations.

In this appendix, we address OJP's commentary, OJP's assertions of factual inaccuracies, and the actions proposed by OJP to implement the recommendations in our report.

OIG ANALYSIS OF OJP'S COMMENTS

OJP agreed with our finding that a lack of documentation and evidence from claimants contributed significantly to delays in processing Hometown Heroes Act claims. OJP also agreed that claims were delayed while OJP was searching for a new pathology contractor to conduct medical reviews for the Public Safety Officers' Benefits (PSOB) claims. OJP's response, however, disagreed with our finding that lengthy and inconsistent legal reviews contributed to the slow processing of Hometown Heroes Act claims. OJP's response also took issue with our findings regarding the legal reviews of the claims. We believe that OJP's response is not persuasive and is misleading.

In general, OJP's response stated that the OIG report does not acknowledge that the lengthy legal reviews were necessary and appropriate to address "often-complex factual, legal, and medical information." The OIG is well aware of the complexities and issues from our review of claims determinations and discussions with both PSOB Office and OGC staff that process Hometown Heroes Act claims, which are detailed in the report. As described in our report, notwithstanding the complex issues, the evidence demonstrated that in some cases the

legal reviews were untimely because of inefficient internal OGC practices, questionable document requests, and OGC's lack of timeliness standards for its legal reviews. Also, we note that the excessive delays in implementing the Hometown Heroes Act and in processing claims have been already acknowledged in congressional testimony by the Department. Regarding the time taken to begin processing claims, the former Attorney General stated, "It's taken us too long, and I apologize to the families."[52] OJP's suggestion in its response that the delays were reasonable is not supported by the evidence or the Department's position.

Moreover, our analysis of the evolution of the PSOB Program and the decisions on claims showed that OJP initially applied a narrow interpretation of the Act's requirement that a public safety officer's activities be "nonroutine stressful and strenuous" in denying 19 claims.[53] We note that OJP recently changed how it applies the term "nonroutine" in evaluating PSOB claims and that it invited all previously denied claimants to request an appeal. We also note that the first four denied Hometown Heroes Act claims that had completed the first level of appeal at the time of our review were overturned and approved.

In the following paragraphs, we address in more detail each of OJP's specific comments.

Calculation of Time for OGC Legal Review

The OIG disagrees with the OJP assertion that the OIG incorrectly determined the time Hometown Heroes Act claims were in legal review. The data available to the OIG was sufficiently complete and confirmed by interviews with OJP staff, which supported the findings in the report. To ascertain the time it took OGC to conduct legal reviews, we reviewed all case notes contained in the PSOB Office database for each of the 112 completed Hometown Heroes Act claims. We were able to identify the date a case file was sent from the PSOB Office to OGC and the date OGC

[52] U.S. Senate Committee on the Judiciary, Oversight of the U.S. Department of Justice, 110th Cong., 1st sess., July 24, 2007.

[53] These 19 claims involved public safety officers that had suffered a heart attack or stroke after responding to a call but before arriving at the scene, after responding to a call that was a false alarm, after responding to a call and not conducting law enforcement or emergency activities at the scene, or after responding to a call and not performing any activity that involved great physical exertion at the scene.

returned a case file in the vast majority (95) of the 112 claims.[54] In addition, we were conservative in our estimates of the time taken for legal reviews, and we did not include any information from the database unless a PSOB Office staff member entered into the case notes a clear statement that a case file had been sent to or returned from OGC.

OGC also argued in its response that our estimate of the time taken for legal reviews was incorrect because OGC attorneys do not use the PSOB Office database and the database does not include any case-logging information from OGC. We noted that OGC maintains a spreadsheet that identifies where a PSOB case file is at any time, but the dates in the "Received in OGC" and the "Returned to PSOB" columns are overwritten every time the case file is moved in and out of OGC. Consequently, the OIG could not use the OGC spreadsheet to estimate the times for legal review of the Hometown Heroes Act claims. The OIG's estimate was based on an analysis of 85 percent (95 of the 112) of all the claims that had been completed, using the most complete data available in OJP, and we believe it is a valid portrayal of the time that OGC took to conduct legal reviews of Hometown Heroes Act claims.

OJP asserted that the only applicable standard for judging its timeliness was the Attorney General's 90-day deadline. We note that the Attorney General's standard is applicable to the entire PSOB Office's processing of claims, not OGC's legal reviews. Nonetheless, our review found that OGC's legal review of at least 26 of the 95 cases for which reliable data were available exceeded 90 days.

Allegation of Unwarranted Length of Time in Processing

OJP's response that the majority of the Hometown Heroes Act claims (75 percent) were processed by two OGC attorneys is not consistent with the information provided to the OIG during our review. We asked questions in several interviews with OGC staff about how

[54] OJP is incorrect in its assertion that our method led us to count as part of the legal review process time it spent waiting for the PSOB Office to collect additional evidence or information from claimants. OJP stated that because OGC sometimes held case files while awaiting action by the PSOB Office, the OIG's estimate wrongly included the wait time as part of the legal review. However, during our fieldwork, we were told that OGC did not retain case files after requesting that the PSOB Office collect additional evidence or information. OGC returned the case files to the PSOB Office because they contain evidence and contact information that Benefits Specialists need to obtain additional material requested by OGC reviewers. As a result, while we counted time spent waiting for additional documents or information in our overall estimate of total claims processing time, we did not attribute that time to the legal review process.

PSOB claims are assigned for legal review. In August 2007, the General Counsel told us in an interview that he intentionally spread the PSOB Program work among many attorneys so that they could all gain experience and because death benefits claims are "depressing." Also in August 2007, the Deputy General Counsel stated that 11 OGC attorneys worked on PSOB claims. She stated that while some attorneys have more experience with the Hometown Heroes Act, all of the 11 attorneys worked on Hometown Heroes Act claims.[55] Additionally in August 2007, the OGC paralegal who assigns PSOB claims to attorneys told the OIG, "There were [originally] only two attorneys working on the Hometown Heroes Act claims, but now all the attorneys assigned to review claims are working on the[se claims]."

The OJP suggestion that reviewing the attorney signatures on the Hometown Heroes Act claim determinations would show that the majority of claims were reviewed by only a few OGC attorneys is misleading. After receiving the OJP response, we reexamined the claims determinations and confirmed that they contained only three signatures, those of the PSOB Benefits Specialist who prepared the determination, the PSOB Director who reviewed and approved the determination, and the OGC attorney who concurred with the determination. This attorney's signature on the majority (64 of 112) of the Hometown Heroes Act claims determinations was that of the Deputy General Counsel. As described to us during our review, however, she did not conduct primary legal reviews. According to the General Counsel, he had assigned the Deputy General Counsel the responsibility to conduct a secondary review of all PSOB claims to ensure consistency. According to the Deputy General Counsel, the primary legal review was carried out by OGC staff and contract attorneys, and she then examined their legal analyses for consistency. That process was confirmed in all of our interviews, as OGC staff told us that every PSOB case file was routed through the Deputy General Counsel (or the attorney acting in her absence) for the secondary review. Therefore, it does not appear that the OGC attorney signatures on the claim determinations are those of the primary legal reviewers.

The OJP statement that OGC attorney requests for documentation did not lead to unnecessary delays is also not supported by our review of the PSOB database or our interviews with PSOB Office and OGC staff. Not all of the documents collected during the claims review process are needed to begin the legal review. By waiting until all possible documents are in hand, OGC unnecessarily delayed beginning its legal reviews. The

[55] In October 2007, the Deputy General Counsel told us that OGC had increased the number of attorneys working on the PSOB claims to 12.

OIG agrees that it is often important for OJP to request additional information from claimants. We also agree that the example OJP gives is one of those instances where it is important to request additional information. In the OJP example, OJP requested information on a decedent's activities for a longer period than 24 hours prior to the incident because OJP wanted to establish whether the onset of the officer's heart attack or stroke actually occurred earlier.

However, some of the OGC requests for additional documentation were made when the evidence already at hand should have enabled the OGC attorney to proceed with the legal review of the claim, and in these cases, the claims process was delayed unnecessarily. For example:

- Beneficiary Information – While it is OJP's responsibility to identify all beneficiaries, documentation to establish each potential beneficiary's eligibility (e.g., birth certificates, marriage licenses, divorce decrees) is not needed to begin evaluating whether the public safety officer's death meets the criteria for the PSOB Program.

- State and Local Death Benefits – In some cases, OGC unnecessarily delayed reviewing cases pending the receipt of hard-copy documents to confirm claimants' statements as to whether they had received state or local benefits.[56] In other cases, OGC asked the PSOB Office to obtain documentation on state or local benefits even though the state or locality where claimants resided did not provide benefits for death by heart attack or stroke. The Deputy General Counsel stated that OGC is no longer requesting this information for claims from those states or localities.

- Basic Program Criteria Determinations – In some cases, OGC requested additional documentation when the evidence already at hand showed that the claims clearly did not meet basic PSOB Program criteria. For instance, OGC sometimes requested 10 years of medical records even though the evidence showed that the decedent was not a public safety officer or had not been engaged in line-of-duty activity and so was not covered by the PSOB Program.

Waiting until these types of documents are received before beginning legal reviews unnecessarily delays claims processing and increases the

[56] While receiving such benefits does not affect the eligibility of a claimant under the Hometown Heroes Act, it helps OGC establish that another authority considered the public safety officer's death to have been either in the line of duty or not.

total processing time. Such delays contributed to OJP taking a median of 10 months to process claims after the PSOB regulations were issued.

OJP asserts in its response that it maintains the "substance of much of the [OGC attorney's] advice, commentary, requests for information, and legal review" in electronically stored media. However, that does not refute the OIG report finding that OGC has no formal record-keeping system to document its attorneys' actions on PSOB claims. While OGC attorneys may keep their e-mails concerning their reasoning and advice on PSOB claims, there is no formal system for recording information requests in the hard-copy case file or case file database. This informal process could lead to duplicative requests for information. Further, OJP's response conflicts with information it provided to us during our review. As stated in the OIG report, the Deputy General Counsel told us that she encourages attorneys to put information requests and comments related to a claim in writing. However, she said that communication with the PSOB Office was informal and often occurred by telephone, e-mail, or in person. Consequently, as we observed during our review, the PSOB case files generally contained no record of an OGC request unless it was put in by a PSOB Office staff member.

The OJP assertion that our finding that OGC attorneys made inconsistent edits on claims determinations is "unsupported by data" does not address the issue that we raised. In our review of the claims determination templates OGC created for use by the PSOB Office, we noted instances in which different OGC attorneys made edits to the templates that PSOB Office staff told us left them confused as to which template version was current. Also, we saw instances in which draft determinations were passed back and forth between the PSOB Office and OGC numerous times to incorporate OGC edits, lengthening the time it took to process claims. The fact that the claims determinations were sometimes heavily edited was confirmed in interviews with both PSOB Office and OGC staff. For example, the PSOB Office Director told us that her staff was required to frequently revise documents based on what appeared to be individual language preferences not affecting the substantive legal issues. She told us that her office had stopped delaying the claims determinations for stylistic changes.[57] In August 2007, the Deputy General Counsel stated that she had directed the attorneys not to make such stylistic changes unless it was necessary for legal

[57] Stylistic changes we observed included such things as changes to the placement of bullets or the spacing of signature lines.

sufficiency, although she claimed to us that the edits had not caused any delays.[58]

Finally, in a footnote on page 3 of its response, OJP stated that the OIG flowchart depicting the claims review process (Figure 1 on pages 11 and 12 of this report) "appears to miss whole steps." The OJP response provides as an example of an omitted step, stating that the box representing the pathologist review does not contain a full and complete explanation of the reasons for the pathologist's review. The OJP comment misconstrued the purpose of a flowchart, which is to present a process in a succinct graphic form. A complete description of the role of the pathologist appears in Table 5 in Appendix 5, *Staffing for the PSOB Program*.

OJP'S CLAIMS OF FACTUAL INACCURACIES

The OJP response listed nine statements or references in the OIG draft report that it believes were mistaken or incomplete. We address each of the nine matters below.

1. Summary of OJP's Statement: OJP stated that the OIG draft report's description of the October 2, 2007, Bureau of Justice Assistance (BJA) policy memorandum as indicating that any response to an emergency call should be considered nonroutine is an inaccurate description. According to OJP, "the policy memorandum creates a rebuttable presumption, specifically by providing that '[r]esponding to an emergency call shall presumptively be treated as nonroutine.'"

OIG Response: The OIG report provided a plain language description of the meaning of the memorandum. However, to address OJP's point, we have added a footnote to explain, in legal terms, that OJP considered the direction provided by the memorandum that "responding to an emergency call shall presumptively be treated as nonroutine" as a "rebuttable presumption."

2. Summary of OJP's Statement: OJP questioned the accuracy of the OIG draft report's statement that "great physical exertion [i]s required

[58] In its response, OJP stated that the Deputy General Counsel's comments during the interview pertained to direction she gave the attorneys "literally years" before OJP began processing Hometown Heroes Act claims in September 2006. However, our August 2007 discussion with the Deputy General Counsel was specifically related to OGC attorneys' stylistic edits to the Hometown Heroes Act claims determinations in 2007, and she did not indicate that she was referring to directions she had given years before the Act was implemented.

by the regulations" because that exact term is not in the PSOB Program regulations.

OIG Response: The OJP response is correct that the exact language does not appear in the PSOB Program regulations. Although we maintain that our paraphrasing provided an accurate description of the program requirements, to avoid confusion we changed the report to read, "did not involve 'nonroutine stressful or strenuous physical activity' as required by the regulations."

3. Summary of OJP's Statement: OJP stated that "[o]n pages 1 - 2, to the extent the bridge paragraph of the OIG Draft Report is intended to provide an accurate legal description of the HHA provisions, it is abbreviated and conflates several statutory requirements, and thus is inaccurate."

OIG Response: We reviewed our description of the Act on pages 1, 2, and 3 of the Background section of this report and believe it provides an accurate, plain language description of the Act.

4. Summary of OJP's Statement: The OJP response stated that "the first sentence of the second full paragraph [on page 3 of] the OIG Draft Report is inaccurate" because the criteria discussed in that paragraph ("nonroutine stressful or strenuous physical activity" and "competent medical evidence to the contrary") are not the only criteria for determining whether a claim would be eligible for compensation.

OIG Response: The OIG report is clear that those are not the only two criteria. The full criteria are discussed immediately preceding the paragraph in question. However, the paragraph at issue (on page 3 of this report) focuses on OJP's definition of the two specific terms that had raised congressional concerns after the Act's implementation.

5. Summary of OJP's Statement: OJP stated that the OIG report definitions of "nonroutine stressful physical activity" and "nonroutine strenuous physical activity" on pages 5 and 6 do not match the language of the regulations and "to that extent are erroneous." OJP also stated that the OIG's definitions "may have been intended to incorporate notions that inform a BJA policy memorandum of October 2, 2007" regarding the interpretation of "nonroutine." OJP stated the memorandum "does not purport to create a definition of nonroutine." Instead, OJP stated, the memorandum "provides guidance on how to evaluate evidence relating to whether an activity may be nonroutine."

OIG Response: The OIG report's description of "nonroutine stressful and strenuous physical activity" is not a verbatim quote of the regulations and presents the regulatory language in plain terms.

6. Summary of OJP's Statement: The OJP response stated that the OIG report's discussion (page 6) of OJP's coordination with the Armed Forces Institute of Pathology (AFIP) to define the term "competent medical evidence to the contrary" is incomplete because OJP also "consulted extensively with other medical-, public safety-and vocational experts."

OIG Response: That information actually was presented on page 3 of the report in the introductory paragraph of the section to which OJP referred.

7. Summary of OJP's Statement: The OJP response stated that the OIG report's description of the "PSOB Program beneficiary hierarchy" in footnote 24 on page 8 and the citation for the Mychal Judge Act are incorrect. OJP stated that the *Department of Justice Appropriations Authorization Act of 2005* amended the Mychal Judge Act provisions regarding the statutory order of death beneficiaries for the PSOB Program.

OIG Response: We revised footnote 24 on page 8 of this report to reflect the changes made by the *Department of Justice Appropriations Authorization Act of 2005* by adding "the individual designated as beneficiary by the public safety officer at their agency or organization" to the roster of beneficiaries.

8. Summary of OJP's Statement: The OJP response stated: "To the extent that the second paragraph on page 9 of the OIG Draft Report suggests that a claimant 'has the opportunity to present new or additional evidence' only '[d]uring a hearing,' it is inaccurate. At each level of administrative appeal, the claimant has the opportunity to provide additional evidence and argument."

OIG Response: The OJP response misquotes the OIG report. We did not state that the claimant can "only" present new evidence to the hearing officer. Further, the section cited by OJP refers the reader to the full description of the appeal process found in Appendix III of this report. This appendix clearly states that claimants can present new evidence at each administrative level of the appeal process.

9. Summary of OJP's Statement: The OJP response noted that the *Department of Justice Appropriations Authorization Act of 2008*, signed into law on December 26, 2007, changed the court of jurisdiction for appeals beyond the administrative level from the U.S. Court of Federal Claims to the Court of Appeals for the Federal Circuit.[59]

OIG Response: We updated Appendix III of this report to reflect the new legislation.

RECOMMENDATIONS

Recommendation 1: The BJA should finalize the "Attorney General's Guide to the Hometown Heroes Act."

Status: Resolved – Open

Summary of OJP's Response: OJP agreed with this recommendation and stated that the BJA will work with the Department of Justice to finalize the "Attorney General's Guide to the Hometown Heroes Act."

OIG Analysis: As discussed in the report, the BJA is in the final phase of editing the "Attorney General's Guide to the Hometown Heroes Act." Please provide the OIG with a copy of the final guide when published or a status report on the guide by June 30, 2008.

Recommendation 2: The OJP OGC staff attorneys should use the PSOB Office case management system to record their case notes, requests for documentation, and other case-related communication with the PSOB Office.

Status: Resolved – Open

Summary of OJP's Response: OJP agreed with the recommendation and stated that the OGC attorneys and the PSOB Office will use the system when it is "sufficiently developed and operational."

OIG Analysis: By June 30, 2008, please provide the OIG with the status of OJP's implementation of the new PSOB case management system and a copy of the guidance directing attorneys to use the system.

[59] The OJP response acknowledged that 28 C.F.R. § 32.55(a), which was the source of the OIG's report language, is no longer accurate and must be amended.

Recommendation 3: OJP OGC should establish more definitive performance timelines for attorneys' reviews of PSOB claims to facilitate claims processing.

Status: Resolved – Open

Summary of OJP's Response: OJP agreed with this recommendation and stated that the PSOB Office will send a draft claim determination on the claim to OGC within 30 days of receipt of all necessary information and identification of all potential beneficiaries. OGC will complete its review and forward its recommendations to the PSOB Office for execution within 45 days of receipt of a complete PSOB claim.

OIG Analysis: By June 30, 2008, please provide the OIG with the status of OJP's implementation and tracking of performance under these standards.