



*Understanding the administration of
Heart and Lung Act claims*

A SUCCINCT GUIDE

By **Stephen L. Korbel** and **John A. McCreary, Jr.**,
Babst, Calland, Clements & Zomnir, P.C.

Of the myriad of employment laws that borough officials must navigate on a regular basis, none appear to cause the same level of confusion and general angst as do work-related injury claims made by borough police officers¹ pursuant to the Heart and Lung Act (Act)². The source of the colloquial reference to the Heart & Lung Act is based upon the Act's coverage of cardiopulmonary disabilities contracted by borough police officers as a result of their employment with the borough. Despite the Act's informal name, it applies to a much broader category of work-related injuries that result in temporary disability to officers.

Application of the Act

The Act removes from the Pennsylvania workers compensation system³ certain injuries that result in temporary disability to officers and provides them with more generous benefits than they would have received if they remained in the workers' compensation system. Specifically, the Act provides the continuation of full wages, compared to two-thirds of wages in the workers' compensation system, and the payment of any medical or hospital bills.

In general, the Act will apply to injuries sustained by officers if the following criteria are met: First, the officer is injured while performing an official duty. An officer is engaged in an "official duty" under the Act if the officer is injured while engaging in an obligatory task, conduct, service or function that arose precisely from his or her position as an officer.⁴ Next, the injury must be temporary in nature. Under the Act, an injury is temporary if (1 on the basis of medical evidence, it appears

that the recovery period from the injury is a specific or determinate period of time; or (2) recovery can be anticipated in the foreseeable future.⁵ Finally, the injury must prevent the officer from performing the essential duties of his job for a temporary period of time. If the above factors are met, the type of injury the officer sustains, or the manner in which such injury was sustained, is of no consequence to the determination of eligibility for benefits under the Act.

Available Benefits and Bookkeeping Tips

An officer who applies for – and receives benefits under – the Act will receive his "full rate of salary and benefits as fixed by ordinance or resolution." This also includes any salary or benefits (including various benefits tied to seniority such as vacation time and longevity pay) payable under a collective bargaining agreement or interest arbitration award during the time period of the covered disability. However, overtime compensation is not included in the calculation of an officer's salary under the Act, even if the officer has a history of earning certain minimum levels of overtime.⁶ The officer is also entitled to accrue sick leave while he receives benefits under the Act; however, officers cannot be required to use or otherwise exhaust their accrued sick leave while recovering from an injury covered by the Act. Any health insurance benefit must be maintained at the level the officer and his dependents, if any, would be entitled to absent the injury.

From a bookkeeping perspective, salary and benefit payments under the Act are not taxable, so state and federal income taxes should not be deducted from the officer's salary. Medicare and FICA taxes must be deducted for the first six months of payments under the Act; thereafter the deductions should cease. The

borough should also continue to make authorized pension-related deductions and previously authorized deductions, including but not limited to contribution towards healthcare or other insurance or benefit products and union dues.

As a result of the tax treatment of benefits under the Act, an injured officer potentially has greater take home pay than if he was actively working for the borough. Unfortunately, this may provide a disincentive for the officer to return to work. Accordingly, borough officials should be vigilant and monitor officers receiving benefits pursuant to the Act to ensure that they return to work as soon as they recovered or, to ascertain if an injury has become permanent and therefore disqualifying.

The officer's injury may also be compensable under the Pennsylvania Workers' Compensation Act (Workers' Compensation Act). This is a determination that is separate and distinct from the determination of eligibility under the Act. Under no circumstances should a borough allow eligibility under the Act to be determined by workers' compensation referees. Instead, the borough itself should make the determination of eligibility as set forth later in this article. If the officer receives workers compensation benefits, the Act provides for a set-off that entitles the borough to any relevant workers compensation benefit received or collected by an officer. To the extent an officer does not provide any applicable workers compensation payments to the borough, the borough may deduct that amount from any payments it makes to the officer pursuant to the Act.

Administrative Process to Determine Eligibility for and the Termination of Benefits

From the perspective of the borough, it is imperative that

¹Although the Heart and Lung Act applies to several categories of law enforcement and related personnel, for purposes of this article, we will focus on its application to Borough police officers.

²The formal name of the Act is the Enforcement Officer Disability Benefits Law, 53 P.S. § 637 *et seq.*

³The Pennsylvania Workers Compensation Act, 77 P.S. § 1 *et seq.*, governs Pennsylvania's workers' compensation system.

⁴*Davy v. Pennsylvania State Police*, 875 A.2d 1233 (Pa. Cmwlth. 2003).

⁵*Cunningham v. Pennsylvania State Police*, 507 A.2d 40 (Pa. 1986).

⁶*Schmidt v. Borough of Stroudsburg*, 670 A.2d 208 (Pa. Cmwlth. 1996).



APPLIED BENEFITS An officer who receives benefits under the Act will receive his “full rate of salary and benefits as fixed by ordinance or resolution

an officer who is injured while performing an “official duty” immediately notify his supervisors of such injury and subsequently complete an injury report. The injury report should be similar to the report the borough utilizes to report job-related injuries under the Workers’ Compensation Act, but should also collect the following: 1) information that establishes the injury is temporary in nature; 2) information that establishes the injury occurred during the performance of the officer’s official duties; 3) information that establishes that an officer will not be able to perform at least one of the essential functions of his position; and 4) the identity of any witnesses that have information regarding the injury to the officer.

The completed injury report should be submitted to and reviewed

by the borough official responsible for processing borough personnel matters. This borough official should analyze the information contained in the injury report and conduct any additional investigation necessary to make a determination with respect to the officer’s eligibility for benefits under the Act. In many instances, this determination will be fairly straight-forward. However, in situations where the determination of eligibility is more complicated, the borough should consult with its solicitor or special labor counsel.

If the borough determines that the officer is eligible for benefits under the Act, the benefit should begin on the officer’s next regularly scheduled workday after the date of the injury. If the borough determines that the officer is not

eligible for benefits under the Act, the borough should prepare a letter to the officer that details the reasons for the borough’s conclusion that the officer is not eligible for benefits under the Act. It is imperative that this communication be promptly delivered to the officer by a method that provides a delivery confirmation. The communication must also inform the officer that he has the right to appeal the decision to borough council or through the grievance procedure of the collective bargaining agreement if it so provides. Any appeal must be received by the borough within ten work days following delivery of the written decision to the officer.

If the officer appeals the borough’s determination, the borough must hold a due process

hearing pursuant to the procedures set forth in the Local Agency Law.⁷ The Local Agency Law authorizes borough council to serve as the adjudicatory body. Borough council should be represented by the borough's solicitor or special labor counsel during the due process hearing. The borough should also consider retaining additional legal counsel to represent the borough with respect to the determination that the officer is not eligible for benefits under the Act. Such representation is extremely important because the borough bears the burden of establishing that the officer is not entitled to benefits under the Act. Finally, the borough should ensure that the hearing is transcribed so that there is a record of the hearing in case the officer files a further appeal in the manner prescribed by the Local Agency Law, usually to the Court of Common Pleas.

The issues to be considered by borough council during the hearing will be those identified in the correspondence sent to the officer that sets forth the reasons for the denial of benefits under the Act. The borough and the officer (or his legal counsel or union representative) are permitted to call witnesses, examine and cross-examine witnesses and provide other documentary evidence. At the conclusion of the hearing, borough council must weigh the evidence and provide the parties with a written decision. The written decision must be in the form prescribed by the Local Agency Law. Either party may file a further appeal in accordance with the Local Agency Law

Termination of Benefits

If the borough has determined that an officer is eligible to receive benefits under the Act, those benefits cannot be discontinued without the officer's permission or until the completion of a due process hearing



INJURY REPORT There is a need to analyze the information contained in the injury report, see if any further investigation is needed and determine eligibility for benefits under the Act

under the Local Agency Law. Benefits can be terminated following a due process hearing if borough council determines that the temporary disability has become permanent or the officer has recovered from his injury. To begin the process of terminating benefits, the borough should convene a meeting with the officer pursuant to the requirements of *Cleveland Board of Public Education v. Loudermill*.⁸ At the meeting, the borough should provide the officer with evidence that supports its belief that the officer is no longer eligible for benefits under the Act. If the officer does not agree with the borough's position, the borough should proceed to convene a hearing pursuant to the Local Agency Law

hearing before borough council to determine if the officer is still entitled to benefits under the Act. This hearing will follow the process set forth above.

Conclusion

Why should a borough care about this technical and complicated process? Simply stated, by failing to adhere to the Act and the procedures required by the case law that has developed under the Act, the borough is inviting lengthy and costly litigation. By adopting a policy or procedure to process injury claims by borough police officers and consulting regularly with legal counsel, the borough is likely to avoid any unnecessary litigation. **(B)**

⁷Pa. C.S.A. §551 *et seq.*

⁸470 U.S. 532 (1985).