

PSEBA: A Case Study on Landmark Claims

*Thursday, September 9th
ILCMA Summer Conference*



Panelists

- Britt Isaly, Partner Attorney, Ancel Glink, P.C.
- Robert Gustafson, Safety & Workers Compensation Manager, Evanston
- Patrick Urich, City Manager, Peoria



Intervention in Pension Board Hearings

- Do you Have Evidence showing there was no “Act of Duty”?
- Do you have Medical Evidence about Injury Unfavorable for the Police Officer or Firefighter (e.g., a non work related injury)?
- Consult with workers’ compensation attorney – No Similar Issues?
- With Your Evidence, Can you Likely Obtain a Pension Board Decision Which is Favorable for the PSEBA Claim? If, so, consider Intervention in the Pension Board Hearing;
- City’s Motion to Intervene:- Pension Board’s Discretion to Grant or Deny;



Application to City for Benefits Under PSEBA: Complete Prior to the Pension Board's Hearing

- Ask for Facts, Witnesses to accident, Injuries Claimed and Names of Medical Providers;
- Enrolled in Outside Health Insurance & Spouse's Insurance? Medicare Coverage? Possible Credit!
- Prior Family Claims to Health Ins Under PSEBA?
- Get a Signed Medical Release and Consent.

Enact Ordinance Creating PSEBA Application & Administrative Hearing Structure

- Notify Claimant or his Attorney About Hearing Requirement and Structure;
- Hearing is a trial with Witnesses, Documentary Evidence, Judge, Appealable Decision;
- Appeal an Unfavorable Decision, if Necessary, to County Circuit Court;
- Consider total expected costs of appeal versus payout of Insurance Premiums; Do a Cost-Benefit Analysis;

Heneghan Vs. City of Evanston

Injury Date: June 10, 2016

Injury Suffered: Bilateral comminuted calcaneus fractures
(the shattering of both heels)

Circumstances: Attending an “...outside training request...”

Denial Reasoning: Only met 2 of the 3 criteria

- Injury occurred after PSEBA enacted
- Granted a line-of-duty disability pension
- Was not in “...response to what is reasonably believed to be an emergency...”



Heneghan Vs. City of Evanston (con'td)

Denial Reasoning (cont'd):

- Of the two court decisions (Gaffney v. Orland or DeRose v. Highland Park) needed to determine which case more closely resembled Mr. Heneghan's circumstances.
- Despite the wording in his pension application:
 - "Injury occurred in response to what was reasonably believed to be an emergency in that it was a live fire training drill and the safety of the additional firefighters was a risk if the fire and generating smoke and fumes were not ventilated properly out of the structure."
 - Mr. Heneghan stated at his pension hearing "...I sent the outside training request to...Division Chief Scott." "...I got an e-mail back stating that I was okay for the training..."

PSEBA Application Review Process:

- Attend all relevant pension board hearings
- Ensure PSEBA application is detailed and submission is complete
- Request & review pension hearing transcripts
- Review injury report details
- Request & review pension board letter of finding



Peoria and PSEBA

International Association of Fire Fighters Local 50 v. City of Peoria

- City of Peoria adopted the IML model PSEBA ordinance that provided definitions for “catastrophic” and “injury” and a process for reviewing PSEBA claims.
- Local 50 filed suit challenging the ordinance
- District court ruled against the City
- Appellate Court ruled against the City, relying on a judicial definition rather than a home rule definition
- Supreme Court agreed to hear the case



Peoria and PSEBA

Peoria/IML Position

- City argues definitions in a home rule ordinance supersede the judicial definition
- Illinois' Constitution provides broad home rule powers, which can only be limited by the General Assembly
- City believes the ordinance is consistent with the PSEBA statute
- City also argues that only the General Assembly can limit home rule, not the judiciary, which is consistent with other Supreme Court rulings



Peoria and PSEBA

Esser v. City of Peoria

- A PSEBA-eligible Peoria police sued the City saying that it was required by the Act to pay the entire premium amount to be covered by the City's low-deductible group health insurance plan.
- The City argued that, under the statute, it was only required to pay the premium amount to be covered by the City's high-deductible group health insurance plan, which was less expensive than the City's low-deductible plan.
- Trial Court and Appellate Court agreed with Peoria.



Peoria and PSEBA

Public Act 102-439 (HB2568)

Sec. 3. Definition. For the purposes of this Act, the term "firefighter" includes, without limitation, a licensed emergency medical technician (EMT) who is a sworn member of a public fire department, a paramedic employed by a unit of local government, or an EMT, emergency medical technician-intermediate (EMT-I), or advanced emergency medical technician (A-EMT) employed by a unit of local government.

For the purposes of this Act, the term "health insurance plan" is limited to the insurance plan options that are codified in the employee's collective bargaining agreement. If the collective bargaining agreement is silent on plan options, the available plans for the employee shall be negotiated with the authorized representative and subject to the grievance process.



Questions?

