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CITY OF DANBURY

155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

DENA DIORIO
DIRECTOR OF FINANCE

(203)797-4652
FAX: (203)796-1526

November 14, 2005

Honorable Mark D. Boughton
Common Council
City of Danbury
155 Deer Hill Avenue
Danbury, CT 06810

Dear Mayor Boughton and Common Council Members:

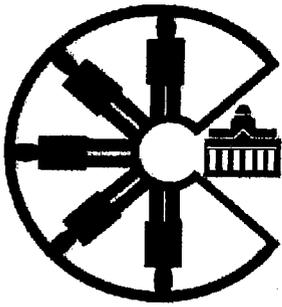
At your meeting of November 1, 2005, Item 16 was referred to me for a 30-day report. Louis R. Chiarito Jr., President of the Danbury Volunteer Fireman's Council is requesting that the City of Danbury expand the scope of workers' compensation coverage beyond what is currently prescribed by the Connecticut General Statutes.

I have met with members of the Volunteer Fireman's Council on several occasions over the last year to discuss issues surrounding workers' compensation, the latest of which took place on April 29, 2005. At that meeting, representatives from CIRMA made a presentation that outlined the relevant statutes pertaining to workers' compensation coverage for volunteer firefighters. I have attached a copy of the presentation which includes the definitions of "fire duties" and "active members". The City of Danbury through CIRMA, administers its program consistent with state statute. The City is not in a position to expand the scope of its program, as we are unable to administer these claims internally.

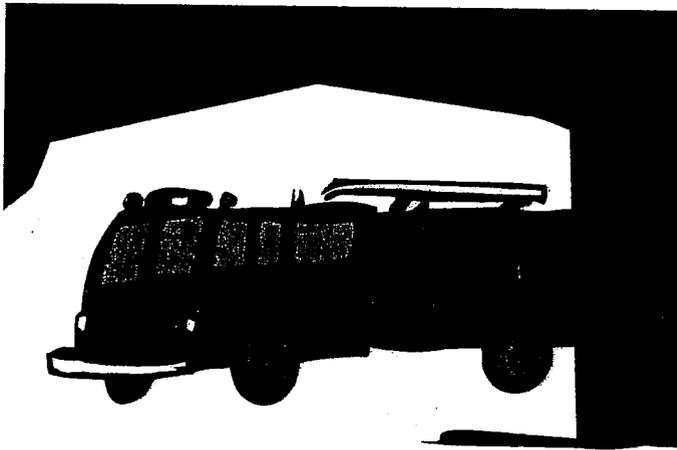
We indicated to the Volunteer Fireman's Council that the only way to expand the scope of workers' compensation benefits for volunteer firefighters is to seek legislative changes at the state level. The City has always complied with these legislative requirements and will continue to do so if they are successful in obtaining the legislative changes they seek.

Sincerely,

Dena R. Diorio
Director of Finance & Personnel



**Workers' Compensation
Volunteer Fire and Ambulance**



City of Danbury, CT

**CIRMA
PO Box 9558
New Haven, CT 06535**

**Pomeranz, Drayton & Stabnick
95 Glastonbury Blvd
Glastonbury, CT 06033**

April 29, 2005

INTRODUCTION

The applicable Connecticut General Statutes addressing workers' compensation benefits for injured volunteer firefighters and ambulance personnel are primarily those of Section 7-314a, Section 7-314b, and Section 7-322a. As will be outlined in the following, these statutes have developed as a result of legislation put in place initially in 1941 and then amended primarily in legislative response to judicial interpretation of these sections.

In the case of Going v. Cromwell Fire District Fire Department, 159 Conn. 53 (1970), our Supreme court noted that a historical review of the legislation pertaining to volunteer fireman does suggest that the General Assembly created a fictitious relationship of employer-employee between volunteer firemen and the municipality or fire district only to ensure the payment of benefits to volunteer firemen similar to those provided to regular firemen. The statutes have always served as a basis to encourage volunteerism and properly staff volunteer fire departments. As will be noted, however, there are aspects of the traditional volunteer activities that remain social and not subject to coverage by the statutes.

Below is an overview of the applicable statutes followed by a brief review of the case law which has been generated as a result of differences in interpretation of the statutes. The intent is to provide the reader with a basic working knowledge of who is entitled to benefits, under what circumstances, and the nature of the benefits provided. Additional potential issues that may develop will be identified.

Thereafter, a review of the provisions in place for compensation to paid municipal firefighters will be reviewed. Finally, issues as to "portal to portal" coverage will be discussed.

7-314(a) – The Definitional Section

The term "fire duties" includes:

1. duties performed at fires
2. while answering alarms of fire
3. while answering calls for mutual aid assistance
4. while returning from calls for mutual aid assistance
5. while directly returning from fires
6. while at fire drills or parades
7. while going directly to or returning directly from fire drills or parades
8. while at tests or trials of any apparatus or equipment normally used by the fire department
9. while going to or returning directly from such tests or trials
10. while instructing or being instructed in fire duties
11. while answering or returning from ambulance calls where such ambulance service is part of a fire service
12. while answering or returning from fire department emergency calls
13. any other duty ordered to be performed by a superior or commanding officer in the fire department.

The term "active member" includes: All active members of the fire company, fire patrol or fire patrol and police patrol, except those who because of their contract come under the Workers' Compensation Act Section 31-275(9)(A)(iv). (These are the paid full time firemen.)

Section 7-314a, was enacted in 1967 and provides the basic outline of benefits to volunteer firemen and volunteer ambulance services certified in accordance with Section 19a-180 of the Connecticut General Statutes.

It provides as follows:

Sub-section (a) notes that such members shall be construed to be employees of the municipality for the benefit of which such volunteer services are rendered and that the parties are subject to the jurisdiction of the workers' compensation commission and shall be compensated in accordance with the provisions of the Workers' Compensation Act.

Sub-section (b) establishes that the average weekly wage of a volunteer fireman or volunteer ambulance service member shall be the average production wage in the state. The average production wage effective 10/1/03 is \$726. The current compensation rate, assuming a tax filing status of married-joint with three dependents, would result in a weekly workers' compensation payment of \$467.75.

Sub-section (c) provides that there would be no prorating of compensation benefits because of other employment by a volunteer fireman or volunteer ambulance provider.

This section was challenged in the case of Wislocki v. Prospect. Our Compensation Review Board and Appellate Courts, however, affirmed that a volunteer fireman's regular employment with a local manufacturer was not to be included in the calculation of his compensation benefits. (As you will see in what follows, however, the legislature did respond in 1995 to provide an alternate remedy.)

Sub-section (d) provides that any condition of impairment of health caused by hypertension or heart disease resulting in death or disability shall be presumed to have been suffered in the line of duty, provided that such member has previously successfully passed a physical examination by a licensed physician appointed by such department or ambulance services, and said examination failed to reveal any evidence of hypertension or heart disease.

This presumption is rebuttable by the municipality or fire district.

Sub-section (e) provides that when members are performing pursuant to a mutual aid understanding, any injured fireman shall be considered an employee of the municipality or fire district in which the volunteer's fire company is located.

This sub-section was added in 1989 in response to the case of Thomas v. Town of Lisbon, 209 Conn. 268 (1988).

Sub-section (f) provides that any volunteer or any person summoned by the state forest Fire Warden or any state forest fire personnel or Deputy Warden who performs fire duties under the direction of such individuals shall be construed to be an employee of the state for purposes of compensation benefits.

This sub-section is the sole exception to the rule that the volunteers home municipality or fire district pays the benefits.

Section 7-314b was enacted in 1995 and sought to increase the benefits available for certain volunteer fire and ambulance personnel.

The statute was again at least in part a response to case law. (Wislocki v. Prospect, 224 Conn. 479 (1993)). Sub-section (a) provides that the benefits under the Workers' Compensation Act paid to the injured volunteer fireman may be based on the salary of his employment or the amount set forth in 7-314a, whichever is greater. Sub-section (b) provides the definition of the fire duties performed in order to qualify for this potentially greater benefit. Of note is that the list of activities in this sub-section appears more narrow than that listed in Section 7-314b. This may well represent a legislative intent to provide the greater benefit in more limited circumstances given that the 1995 legislation did not amend or repeal 7-314.

Sub-section (c) provides that this greater benefit is available only if the injured firefighter is unable to perform his regular employment duties.

This language would suggest that potentially greater benefit is paid only if the firefighter is totally disabled or temporary partially disabled. If in fact the injured volunteer is able to perform his regular employment, then it would seem that any compensation (most likely that under Section 31-308 for permanent partial impairment) should be paid at the rate established in Section 7-314a.

Section 7-322a attempts to address those situations in which an active member of a volunteer fire company offers his or her services to another fire company which is actively engaged in fire duties.

If such volunteer is injured, payments of compensation shall be made by the municipality in which the fireman's fire company is located.

This statute was construed by our courts to address a situation only in which a volunteer fireman arrives at the scene of another company actively engaged in fire duties. In the case of Thomas v. Lisbon, 209 Conn. 268 (1988), our Supreme Court determined that two firemen sent from Lisbon to Taftville pursuant to a mutual aid agreement were not covered by this statute and held that the Town of Norwich was to pay benefits to the two Lisbon firefighters. The response to that case was the amendment to 7-314a previously discussed, which makes it clear that even services rendered pursuant to a mutual aid understanding shall result in the payment of benefits by the municipality in which the volunteer's fire company is located.

Case Law of Interest

Peabody v. Shelton, 3024 CRB-4-95-3 (1996). In this case the Compensation Review Board (CRB) affirmed the denial of benefits to a member who had been changed to "life active member." The Board, in a decision that was affirmed by the Appellate Court, noted that the volunteer's status had changed and there was evidence that he was no longer physically able to perform the duties expected of an active member.

Wannagot v. Shelton, 1512 CRB-4-92-9 (1994) set forth the proper manner of calculating a compensation rate based on the average production wage in our state. It also allowed the municipality to recoup an overpayment out of ongoing benefits.

Collins v. City of Milford, 15 Conn. App. 84 (1988) found compensable a volunteer fireman's conduct in returning an antique fire engine to a station following a parade. The case is of interest, however, in that it provides some guidance in determining how the commissioner will conclude whether the fireman was returning "directly" from fire duty. The court considered the intervening time, the nature of activities of firemen before commencement of return, the nature of activities of firemen during actual return, and the geographical route followed as relevant to the analysis.

Wislocki v. Prospect, 72 Conn. App. 444 (2002). In this case, Mr. Wislocki's widow pursued benefits after his death. She had married him, however, after his date of injury and therefore could not qualify as a dependent under the Workers' Compensation Act for purposes of death benefits under Section 31-306.

Hardt v. Town of Watertown, 4743 CRB-5-03-10 (2004). Here, the CRB noted that a weekly basketball game arranged for members was not "training" within the meaning of 7-314a despite that fact that members earned points toward retirement for participation in the program.

Remaining Issues

One should consider whether or not a self-employed volunteer firefighter is able to collect compensation based on his salary if greater than the average production wage. Compensation Review Board case law would suggest the sole proprietor or one who is self-employed must accept the provisions of Chapter 568 which would mean compliance with workers' compensation insurance provisions.

Section 7-314b would also tend to suggest that a concurrently employed volunteer (i.e. an individual with two jobs or more) should be able to total his income for purposes of determining whether his compensation rate is greater under 7-314b than would be provided by the basic mandate of 7-314a.

Volunteers and administrators of these benefits should be aware that as in the case of all workers' compensation benefits, the only scheduled losses for permanent partial disability or impairment that are allowed are those listed in Section 31-308 of the Workers' Compensation Statute.

“Active members” of the volunteer fire department should be identified in some manner, either by way of a roster listing or by laws. By laws or incorporation papers will often be looked to for purposes of determining how a department defines its active members.

It seems that 1995 amendment, 7-314b, was an attempt to properly compensate an injured volunteer for loss of earnings. It may be argued that the retiree or full-time student who does not have regular employment contemplated by the statute does not qualify for temporary partial disability benefits or discretionary loss of earning benefits after the payment of a scheduled award (31-308a) because they are not participants in the labor force. Case law, however, would certainly support the payment of temporary total disability benefits or scheduled loss to such volunteers.

§ 31-275(1)(A) – notes that for police officers and firefighters that “in the course of his employment” encompasses such individual’s departure from place of abode to duty and return to such individual’s place of abode after duty. (1969 amendment).

Our CRB and courts have not generated much in the way of case law interpreting this provision. In Leonard v. City of Danbury (see appendix, p. vii), the CRB held that such return from duty should be “direct.”

Departure from and return to place of abode, however, is often equated with “portal to portal” coverage. While a “portal” can be a door, an entrance or a gate, “portal to portal” has usually envisioned travel from one property to another.

At what point, however, does a firefighter leave the “abode”? Does it make a difference if that firefighter is paid or a volunteer? There are no decisions yet on point.

The non-firefighter case of Loffredo v. Wal-Mart, (2/28/02) may provide a glimpse of the CRB’s analysis in the future. In analyzing a fall on a worker’s own icy walkway the CRB:

- 1) Noted special errand usually has an element of urgency thus more hazardous than normal coming and going.
- 2) Case by case analysis may be better than a bright line test such as entry onto a public highway.
- 3) 31-275(i)E – “Acts preliminary to work” doesn’t apply.
- 4) Cited Larson on struggle with “portal.”

“Case by case” approach may require a look at the facts and consideration of the risk which leads to the injury.

Workers' Compensation Benefits

D/A	"TT"	"TP"	"MMI"	"PPD"	"31-308a"
Disability paid while the employee can't perform any type of work		Disability paid while worker has restrictions or light duty capacity if there is a wage loss	Maximum Medical Improvement – The point where maximum recovery is reached and determination of any residual or permanent partial disability is made	Permanent Partial paid for percentage loss of use of certain body parts or organs from a schedule established by the legislature	A second look statute that provides benefits in the case of a continued loss of earnings for a period equal to the weeks paid for the scheduled loss or PPD



CITY OF DANBURY
OFFICE OF THE CORPORATION COUNSEL
155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

(203) 797-4518
(203) 796-8043 FAX

PLEASE REPLY TO:

November 30, 2005

Honorable Mark D. Boughton, Mayor
Honorable Members of the Common Council
City of Danbury, Connecticut

RE: November Agenda Item #16
Request of Danbury Volunteer Firemen's Council
Workers' Compensation issues

Dear Mayor and Council Members:

The following is in response to your request for a report in connection with the above referenced matter. At the November Common Council meeting you referred the question to the director of finance, the fire chief and this office for reports. Recall that the Danbury Volunteer Firemen's Council requested that the city consider broadening workers' compensation coverage to volunteers.

You should be in receipt of a memorandum from the director of finance, dated November 14, 2005. Attached to the memo from Mrs. Diorio you will find a set of materials that describes various state statutes dealing with workers' compensation for volunteers. In particular, I draw your attention to references to C.G.S. subsection 7-314a(a), which provides, with certain exceptions, that, "active members of volunteer fire departments ... shall be construed to be employees of the municipality for the benefit of which ... services are rendered while in training or engaged in volunteer fire duty... and shall be compensated in accordance with the provisions of [the workers' compensation act].

The important thing to remember is that state law governs this field and defines through statutes and case law, who shall be considered "active" and what shall be considered "fire duty." As Mrs. Diorio observes, any changes broadening the scope of these terms or this section of the statutes must come from the General Assembly.

If you have any additional questions, please contact me.

Sincerely,

Eric L. Gottschalk
Deputy Corporation Counsel

cc: Dena Diorio, Director of Finance