

# SERGEANTS BENEVOLENT ASSOCIATION

POLICE DEPARTMENT, CITY OF NEW YORK

35 Worth Street, New York, NY 10013

212.226.2180 FAX 212.431.4280

[www.sbanyc.org](http://www.sbanyc.org)



## **TESTIMONY**

Of

**Robert Ganley  
Vice President,  
Sergeants Benevolent Association**

On

**“The Need for More Timeliness and Transparency:  
Oversight of the Public Safety Officers’ Benefits Program”**

Before the

**Committee on the Judiciary  
United States Senate**

**April 26, 2016**

Good morning, Mr. Chairman, Ranking Member Leahy, and Members of the Committee. On behalf of President Ed Mullins and the membership of the Sergeants Benevolent Association of the New York City Police Department (SBA), thank you for the opportunity to appear before you today. Our organization has been honored to work with this Committee over the years on many significant issues and legislation related to the Justice Department's Public Safety Officers Benefits (PSOB) Program. And we greatly appreciate your commitment to ensuring that the PSOB Program operates as Congress intended, and as the families of our nation's fallen heroes deserve.

By way of background, the SBA represents more than 13,000 active and retired Sergeants of the New York City Police Department (NYPD). While our active members reside in and around New York City, we have retirees all around the country. The SBA is actually the fifth largest independent police labor organization in the United States. As part of its responsibilities to its members, the SBA maintains a health and welfare program, and manages a variety of other benefits and services for its members, their families, and the citizens we protect and serve. In my role as Vice President, I am the primary SBA officer responsible for interacting with the families of our members who die or are injured in the line of duty and ensuring that they receive the benefits to which they are entitled. This involves extensive dealings with the New York City Police Pension Fund, which is the entity responsible for payment of these benefits locally.

\* \* \*

As you and the other Members of the Committee are well aware, in just two short weeks more than 20,000 federal, state, and local law enforcement officers will converge on Washington, D.C. to honor their fallen brothers and sisters during National Police Week. During this time, the nation will pause to honor those officers who fell in the line of duty in 2015 at the National Peace Officers Memorial Service, including four from the NYPD. We will also pay tribute to the 252 officers whose names will be inscribed on the Wall of Remembrance at the National Law Enforcement Officers Memorial. In light of these events, the timing of this hearing could not be more appropriate, Mr. Chairman. For the past 40 years, the PSOB Program has represented the commitment of our country to offer services and financial resources to families struggling to deal with the aftermath of a line of duty death or disability. I do not think I am exaggerating when I say that PSOB likely enjoys the support of the entire public safety community and everyone in this room here today.

But in recent months, there has been a great deal of public attention placed on the administration of the PSOB Program, particularly as it relates to the backlog in processing death, disability, and educational assistance claims. While concerns have been raised about the PSOB's claims processing for many years, these issues gained widespread attention following a *USA Today* article in September 2015. The article recounted how the PSOB program has been "mired in delays for more than a decade despite millions of dollars spent on outside audits" and the hiring of additional legal personnel in an effort to speed up the processing of "languishing claims."<sup>1</sup> The article went on to note that as of August 2015, PSOB was delinquent in processing as many as 750 claims.

I wish that I could sit here today and tell you that news about a claims backlog, while shocking, was somehow a "new" phenomenon. But it is not. Unfortunately, we have seen this before. Less than nine years ago, the Department was before this Committee due to a similar backlog that was created over the processing of claims stemming from passage of the Hometown Heroes Survivors Benefits Act of 2003 (HTH). This critical legislation, championed by Members of this Committee, extended PSOB eligibility to deaths from a heart attack or stroke in the line of duty. On the day he was set to testify

---

<sup>1</sup> Nick Penzenstadler, *Police firefighter survivors wait years for death benefit*, USA TODAY, Sep. 2, 2015.

before this Committee in 2007, the Director of PSOB's parent agency, the Bureau of Justice Assistance (BJA), issued two policy memoranda intended to clear up the HTH backlog. But as a 2008 DOJ Office of Inspector General (OIG) report later revealed, the Director's policy memoranda were necessary not because of problems with the Act itself. Rather, the OIG concluded that, this backlog (which at the time of the report was 201 claims) resulted from BJA taking 33 months to issue final regulations to implement HTH.<sup>2</sup> Even after the regulations were issued, the OIG found that many of these backlogged claims were denied because they were evaluated using a remarkably narrow interpretation of the Act.<sup>3</sup>

Two years later, the SBA raised concerns about another backlog of death claims involving law enforcement officers who died as a result of toxic exposures at Ground Zero during the rescue and recovery efforts following the terrorist attacks of September 11, 2001. Since 2007, the SBA has lost nine Sergeants to a 9/11-related cancer. Fatal 9/11-related illnesses such as non-melanoma skin cancer, non-Hodgkin's Lymphoma, and lung cancer continue to be a major cause of incapacitating illnesses and deaths among our members and others in law enforcement. In fact, today the number of law enforcement officers who have died of 9/11-related cancers has surpassed the number who fell on 9/11 itself.

Our outreach to the PSOB Office on this issue began when two of our members' families expressed concern over their claims for which they were still awaiting a response. One filed in 2008, the other in 2009. In December 2009, we were told that these claims were undergoing "medical review," which we took to mean that they were moving forward. That was over six years ago. As far as we can ascertain, they are both still pending. But they are not the only ones. In fact, it appears that DOJ has approved only two 9/11 claims in the past ten years. One of these was for Detective James Zadroga, the first public safety officer whose death in 2006 was directly attributed to Ground Zero exposures. As of the end of March, there are as many as 85 other Police Officers, Detectives, Sergeants, Inspectors, and Captains of the NYPD whose claims are still pending. DOJ has declined to act on these 85 pending claims despite the fact that each of them was approved by the City of New York as a line of duty death as far back as 2007. While we are happy for the family of Detective Zadroga, we have no insight into what distinguished his claim from these others.

Prior to DOJ's announcement on April 6 regarding its method for handling 9/11 claims, each time the SBA contacted PSOB about these or other 9/11-related cases, we were told something along the lines of "we're working on the process." In fact, for one of our surviving families, the last time they were contacted by the PSOB Office was in 2013, when they were similarly informed that the Office was still working on the process. Meanwhile, as this "process" was being developed, as of October 2015 the backlog of claims stemming from a 9/11-related health condition grew to approximately 148 claims. That number has apparently now grown to 175 as of the end of March.

After Congress passed the James Zadroga 9/11 Health and Compensation Act in 2010, we were hopeful that there might be some prompt relief for our surviving families and others with pending PSOB claims. As you know, the Zadroga Act established the World Trade Center Health Program (WTCHP) to ensure ongoing medical care to those suffering from one or more of a number of health conditions linked to Ground Zero exposures. It also reopened the original September 11 Victim Compensation Fund (VCF) to provide compensation to any individual who suffered physical harm or

---

<sup>2</sup> See U.S. DEP'T OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, THE OFFICE OF JUSTICE PROGRAMS' IMPLEMENTATION OF THE HOMETOWN HEROES SURVIVORS BENEFITS ACT OF 2003 ii (2008).

<sup>3</sup> *Id.* at ix.

died as a result of the 9/11 attacks or the ensuing rescue and recovery efforts. We expected that the PSOB Office would utilize a WTCHP certification or VCF determination to establish whether a public safety officer who died of a 9/11-related health condition suffered a “line of duty injury” for purposes of PSOB.<sup>4</sup> So for us, the most significant aspect of PSOB’s April 6 announcement was not that they were finally ready to start taking actions to reduce its backlog of 9/11 claims. It was that it took them more than five years after passage of the Zadroga Act to reach this conclusion.

The time that it has taken the Justice Department to reach a decision on the handling of 9/11-related claims also stands in stark contrast to the method employed by the New York City Police Pension Fund (PPF) to determine benefits eligibility for 9/11 claims and all other line of duty deaths. In New York, when a member of the NYPD dies in the line of duty the Department acts expeditiously to determine the cause of death, which begins with the PPF submitting a line of duty death request to the Medical Division. PPF also submits all of the necessary medical documentation, including autopsy reports, emergency room reports, as well as treating physician reports and notes. The case folder is then reviewed by a panel of three doctors who are not employed by the NYPD, but who are independent contractors to the City. These doctors review all the objective medical evidence before them and determine the cause of death. They either make a recommendation to approve the line of duty designation or to deny it. After that, the officer’s case goes before the New York City PPF Disability Board to determine causation. The Disability Board consists of both labor and management representatives, with each side having six votes and a majority of seven votes required to approve a case. This entire process usually takes approximately four to six months before the financial compensation is paid out for approved cases.

Another aspect of the PSOB Program’s announcement that may have gone overlooked is that those 9/11-related death and disability claims that have been pending the longest will have to continue to wait for a final determination. As you know, BJA’s April 6 announcement of the protocols for determining 9/11-related claims is broken into two parts. The first will hopefully allow for the prompt determination of claims where the public safety officer has either a WTCHP certification of a 9/11-related health condition or VCF determination of eligibility. As part of this process, BJA announced that it will “request from the VCF all WTCHP medical certifications and eligibility determination letters related to pending PSOB claims” and ask claimants to provide medical release forms for WTCHP information when necessary.<sup>5</sup>

Part two of the new PSOB protocols concerns those pending 9/11-related claims without a WTCHP certification or VCF determination. BJA noted in its announcement that it cannot independently apply the same or a similar methodology to claims without the VCF or WTCHP information.<sup>6</sup> This would presumably apply to any 9/11-related claim that was submitted prior to implementation of the Zadroga Act in 2011, such as the two I mentioned earlier filed in 2008 and 2009. It is our understanding that these claims will have to await a forthcoming PSOB rulemaking which the

---

<sup>4</sup> See 42 USC §3796. A PSOB award relies primarily on two main determinations. First, that a deceased or disabled individual met the definition of a “public safety officer” as defined under 42 USC § 3796b and accompanying regulations. Second, that death or disability was the “direct and proximate result of a personal injury sustained in the line of duty.”

<sup>5</sup> U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE, NOTICE OF CLAIMANTS: PROTOCOL FOR DETERMINING PSOB CLAIMS INVOLVING 9/11 EXPOSURE 1 (April 6, 2016), <https://www.psob.gov/pdfs/en/Notice-to-Claimants-Protocol-for-Determining-PSOB-Claims-Involving-9-11-Exposure.pdf>.

<sup>6</sup> See *id.* at 2.

Justice Department listed as part of its Fall 2015 Semiannual Regulatory Agenda.<sup>7</sup> BJA submitted its proposed rule in this matter (which was originally slated to be published this February with a 60-day comment period) to the Office of Management and Budget (OMB) for review on March 21, 2016. If OMB takes the full 90 days it has to review this proposed rule, then it is doubtful we would see its publication in the *Federal Register* before July, with comments due sometime in September. Given the nearly 33 months it took the Department to finalize the Hometown Heroes Act regulations, I doubt that we would see a final rule or a resolution for these oldest pending 9/11-related claims before 2017. That would be a total of 11 years after the death of the namesake of the Zadroga Act, NYPD Detective James Zadroga.

While the backlog of 9/11-related claims is shocking, the backlog of pending claims extends well beyond those related to 9/11 exposures. As DOJ noted in its correspondence to Chairman Grassley last November, the total backlog of death, disability, and educational assistance claims was 1,049 at all levels of review.<sup>8</sup> If you were to remove the 148 claims that DOJ reported as 9/11-related in its letter, that still leaves 901 claims waiting for up to a decade for PSOB to act. At the end of each one of these 901 claims is a spouse, a parent, or a child who is just waiting, hoping that they will see some measure of relief from the PSOB Office. While I fully believe that the PSOB Office staff cares deeply about the work they do, and the families they serve, the endless waiting caused by these incessant delays and backlogs is frankly unconscionable and cannot continue to be tolerated.

Although there is little chance we will ever be able to quantify the financial impact that PSOB's delinquency in processing even these 901 claims has had on the surviving families of those who have died in the line of duty or are now permanently and totally disabled, there are two practical impacts that I would like to point out today. First, any delay in processing a claim can significantly reduce the value of an eventual award from the PSOB Office because there is no inflation index to compensate individuals for lengthy delays in processing their claim. Under 42 USC 3796(i), the amount payable on a PSOB claim is the amount payable as of the date of death or injury of the public safety officer, an amount that increases annually to keep up with inflation. Currently, the award amount for a death or disability occurring after October 1, 2015 is \$339,881. However, if that same officer had died or became disabled in Fiscal Year 2006—the earliest case still pending as of the November letter to Chairman Grassley—their award for a similar claim would be \$283,385. Second, a delay in approving a PSOB death or disability claim could prevent some children of fallen public safety officers from obtaining assistance under the Public Safety Officers' Educational Assistance (PSOEA) Program. Through PSOEA, the spouses and children of public safety officers whose deaths or permanent and total disabilities are covered by the PSOB Program are eligible for up to 45 months of assistance for full-time education or a training program. These resources can be used to defray educational costs such as tuition and room and board, however, they are only available to the children of fallen or disabled officers until their 27<sup>th</sup> birthday absent an "extraordinary circumstances" determination by the Attorney General. It is entirely possible then that among those 901 families waiting for up to a decade for a determination on their loved ones' claim are high school- or college-aged children who have either completely missed their window of opportunity for PSOEA assistance or had it significantly reduced as a result of a delay in processing their parents' claims.

---

<sup>7</sup> See OFFICE OF INFORMATION AND REGULATORY AFFAIRS, Fall 2015 Department of Justice Semiannual Regulatory Agenda Public Safety Officers' Benefits Program Regulations—Project I, <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201510&RIN=1121-AA85>.

<sup>8</sup> See Letter from Peter Kadzik, Assistant Attorney General, Office of Legislative Affairs to Sen. Charles Grassley (Nov. 18, 2015) available at [https://www.judiciary.senate.gov/imo/media/doc/2015-11-18%20DOJ%20to%20CEG%20\(PSOB\).pdf](https://www.judiciary.senate.gov/imo/media/doc/2015-11-18%20DOJ%20to%20CEG%20(PSOB).pdf). The oldest pending claim concerns a disability claim filed on behalf of a public safety officer from Puerto Rico in 2006.

For us and likely many in the public safety community, it is difficult to pinpoint exactly where the problems are in the PSOB claims determination process or the reasons for the backlog of non-9/11 exposure claims. In fact, I doubt there are few outside the Department of Justice who have much insight into the claims determination process because of the lack of transparency in this Program. But I imagine that if you polled all 535 Members of Congress you would find an overwhelming majority have had to contact the PSOB Office at least once during their tenure on behalf of a claimant family looking for any information they can get about the status of a long overdue determination. We do not believe, however, that the problems we are seeing are the result of the PSOB Act or the changes that Congress has made to it over the past 40 years. Rather, it is due to the regulations that DOJ has put forward, and in particular the significant rewrite of the PSOB regulations that occurred in 2005-2006 that included the rules governing the Hometown Heroes Act.<sup>9</sup> Many organizations cite this rulemaking as fundamentally changing the nature of PSOB from a program with the beneficent purpose of providing support to the families of fallen officers to a much more adversarial one resembling a quasi-judicial process trying to determine government liability.

Despite the concerns that have been raised over DOJ's rulemakings on the PSOB Program, the Department is currently in the process of developing two rules to implement the Dale Long Survivors Benefits Act, regulate some 9/11-related claims processing, further amend the regulations for the Hometown Heroes Act, and address other unknown issues. This is being done without any prior consultation or information on the scope of the rulemakings being provided to the public safety community. As previously noted, "Project I" of this proposed regulatory rewrite was sent to OMB on March 21. We have no information on the timing of "Project II" which was expected to be out for public comment in February.<sup>10</sup>

While we await these forthcoming rulemaking actions, there are actions that Congress and this Committee can take to address some of the issues with the PSOB program. First, Congress could ease the high evidentiary burden on PSOB claimants to prove that a public safety officer is entitled to benefits. Prior to the regulatory rewrite of 2005-2006, the PSOB regulations required DOJ to resolve questions over the circumstances of a public safety officer's death or permanent disability by erring on the side of paying benefits to the families.<sup>11</sup> Similarly, the regulations prior to 2005-2006 also required the PSOB Office to give "substantial weight" to the findings of a federal, state, or local agency with respect to a line of duty death or disability.<sup>12</sup> In the current regulations, this has been replaced by language providing that "the PSOB determining official may, at his discretion, consider (but shall not be bound by) the factual findings of a public agency."<sup>13</sup> To be clear, the PSOB Act did not require DOJ to impose upon itself the requirement to give claimants the benefit of the doubt or to give more than just passing deference to the findings of the officer's agency at the time of his disability or death. Rather, we believe that these provisions were in keeping with the original spirit and intent of the PSOB Act. The SBA therefore calls on Congress to codify in statute both the "reasonable doubt" and "substantial weight" standards.

---

<sup>9</sup> See Public Safety Officers' Benefits Program; Proposed Rule, 70 Fed. Reg. 43078 (July 26, 2005); see also Public Safety Officers' Benefits Program; Final Rule, 71 Fed. Reg. 46028 (Aug. 10, 2006).

<sup>10</sup> See OFFICE OF INFORMATION AND REGULATORY AFFAIRS, Fall 2015 Department of Justice Semiannual Regulatory Agenda, Public Safety Officers' Benefits Program Regulations--Project II, <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201510&RIN=1121-AA86>.

<sup>11</sup> See 32 CFR § 32.4 (2005).

<sup>12</sup> See 32 CFR § 32.5 (2005).

<sup>13</sup> See 32 CFR § 32.5(b) (2015).

Second, the SBA believes that the PSOB Program has become increasingly opaque over the years. So much so that it now takes a congressional or Office of Inspector General inquiry or a major news story to reveal problems that affect claimant families. Over the years, information about PSOB claims processing and determinations has been scarce. To a large extent, this is due to a lack of publicly-available statistical information that can keep both Congress and the public informed about the PSOB claims process. In most instances, neither Congress nor the public safety community become aware of problems with the PSOB Office or a backlog in claims until it hits the news or a remarkable oversight effort is made. Frankly, there is no reason for such opacity or secrecy in the PSOB Program. The SBA recommends that Congress require DOJ to submit regular, publicly-available reports on the status of all pending PSOB claims. These reports could be similar to those issued by the September 11 Victim Compensation Fund. Any such mandate should at a minimum include language in the PSOB Act requiring DOJ to take a six-month snapshot of the PSOB program. The information provided could include: the number of claims filed; the number of claims deemed eligible and ineligible, and the grounds for which a claim is deemed not eligible (i.e., an individual not meeting the definition of a “public safety officer”); the number of claims approved and denied (along with information on the basis for denial); and the number of pending claims, broken out by year filed, state, and type of claim. Providing even this basic information would protect the personal information of claimant families while at the same time allowing for proper oversight of the PSOB Program and improving the ability to address problems before they grow out of hand.

### Conclusion

In conclusion, Mr. Chairman, I would like to stress again that the SBA strongly supports the intent of the PSOB Program and the federal government’s efforts to provide financial and educational assistance in honor of those who have made the ultimate sacrifice or been critically disabled in the line of duty. But we are compelled by our allegiance to the fallen and their families to bring to light the fundamental problems with the PSOB program described here today. While we do not mean to impugn the good intentions of the people running this program, we will not ignore the problems with it because we know firsthand the pain and anguish that surviving families struggle with as they try to put their lives back together. We know because those same men and women are our friends, our colleagues, our brothers, and our sisters. And I would challenge anyone in this room to say that it is somehow fair or right that the U.S. Department of Justice adds to their struggles by delaying payment of the benefits to which they are entitled. As I noted earlier, the current situation is simply unconscionable and maintaining the status quo is not an option. We need to look for ways to streamline the claims process to improve the delivery of PSOB benefits and improve the transparency of the PSOB Program to ensure that it is fulfilling its duty to disabled officers and surviving families as Congress intended. The SBA stands ready to continue its work with this Committee to ensure this happens.

Thank you again for the opportunity to appear before you today and for the efforts of this Committee to bring the problems we are here to address to light. I would be pleased to answer any questions you may have.