

FIREFIGHTERS' NEWSLETTER

THIS DOCUMENT CONTAINS IMPORTANT INFORMATION ABOUT FIREFIGHTER RIGHTS



THE IMPORTANCE OF FILLING OUT A CD-72 ACCURATELY

The problem with a poorly written Line of Duty injury report

It may seem unfair to you, but the way you describe your accident on your Line of Duty Member Injury Report (known as a CD-72) can mean the difference between a disability pension or a straight service pension. We are always advising our clients to understand that the CD-72 is a critically important document, both for purposes of protecting their rights to a disability pension, and their ability to obtain compensation in the event that they bring a lawsuit. A few weeks ago, four of the attorneys from Barasch McGarry attended the UFA's Delegate Education Seminar. We were shocked to learn that some attorneys and many firefighters still don't understand how to properly complete a CD-72. It must be filled out accurately and thoroughly to

reflect the essential facts and circumstances of your accident and injury.

With respect to an accident disability pension, one must always be mindful of the difference between an "incident" and an "accident". An accident, for pension purposes, has been defined by the courts as a "sudden, fortuitous mischance, unexpected, out of the ordinary and injurious in impact." On the other hand, injuries sustained while performing routine duties but not resultant from unexpected events, will not be deemed accidents. For example, an injury caused by a trip where tripping is a foreseeable risk of the work being performed, has been held by the Pension Board and courts, to be an incident resulting in a denial of a $\frac{3}{4}$ pension.

By way of example, if a member is injured when he falls in the firehouse, but fails to note on his CD-72 that he tripped over an extension cord that was laying across the apparatus floor by workers, it could be deemed an "incident" and not an "accident". Thus, a CD-72, which may state "member

9/11 FUND COMPENSATION: STRICT DEADLINE APPROACHING

October 3, 2013 is the last day to register

Congress created the September 11th Victim Compensation Fund (VCF) soon after the attacks of September 11th, 2001 to provide recompense and financial assistance to those injured in the attacks, as well as to the families of those who lost their lives. The first VCF only compensated those who were present at the crash sites and who sought medical treatment within "the immediate aftermath" of the attacks. The immediate aftermath meant the 96 hours following the crashes for rescue workers. The VCF closed at the end of 2003, shutting the door on hundreds of first responders who got sick afterwards.

Moreover, many people who assisted with the recovery and cleanup — as



continued on page 2

continued on page 3

continued from “CD-72” page 1

injured knee when he tripped on apparatus floor, will likely be construed as an “incident” unless the extension cord is explicitly specified as being the precipitating cause of his knee injury.

Your disability pension, and future claims against those who are legally responsible for your injuries, depend on the accuracy of this form

After two decades of representing firefighters, it never ceases to amaze us how careless some members are when it comes to protecting their own legal rights. This is especially evident in some of the court cases where negligent landlords and commercial tenants cause injury to firefighters by reason of all manner of fire and building code violations.

Example: One of the following CD-72 descriptions is potentially harmful to a firefighter’s chance of getting justice in court and at the 1-B Pension Board. Read on to find out why.

GOOD CD-72(E)
Description of Accident and Remarks

While ascending staircase marble tread collapsed under my RT foot, causing me to fall in an uncontrolled manner through the step. My head slammed into the steps above me. My RT foot fell through the opening, smashing my RT knee into the steel frame of the staircase. I tried to break my fall by putting my arms out in front of me. I jammed my RT arm and RT shoulder. I felt a shocking and shooting pain in my neck and RT arm and hyperextended my RT knee. I was transported via Batalion vehicle to KCMC.

BAD CD-72(E)
Description of Accident and Remarks

While operating, searching for fire extension accidentally slipped on wet stairs falling down stairs. Twisted right knee and struck both knees on stair treads, struck left shoulder on bannister.

One of the two accident descriptions above is an example of a good one and the other is an example of a particularly bad one. The top one gives a thorough description of where the member’s line-of-duty accident occurred (“while ascending stairs, marble tread collapsed under my rt foot...”.) and how his injuries were sustained (“fall...through step...my head slammed into the steps...”). Unfortunately, the CD-72 on the bottom does not reflect how the member’s accident really occurred (“slipped on wet stairs”).

When that member first came to us, he reported that while the stairs were indeed wet; he had actually tripped over debris and boxes that were left on the stairs leading to the basement. He also told us that the lights on the landing were out, making visibility poor. Unfortunately, he did what so many other firefighters do when they are taken directly from a fire to the hospital. He had an officer fill out the CD-72. But the officer failed to include any of these critical factors in the accident description, and the firefighter signed it in the hospital without making any changes. Simply stating he “slipped on wet stairs” was not descriptive enough. The 1B Board determined that this firefighter had merely had an “incident”, not an “accident”. It found that a “wet step” was not unexpected. After all, it is not uncommon for there to be a lot of water on steps at a fire.

While it is certainly possible to submit an amended CD-72 to more accurately reflect the facts of one’s accident, you can imagine how devastating the eventual cross-examination of that member was. Proving that the member actually tripped over boxes on an unlit staircase, rather than slipped on water from the hose, was an uphill battle after the inaccurate CD-72 was signed and submitted by the member.

The Pension Board turns down many accident disability applications, even for members who are disabled

The plain message here is that your accident disability pension, and the viability of future claims against those who are legally responsible for your injuries, depend upon the accuracy and completeness your CD-72. Take your time in filling it out, review it carefully, and err on the side of including too much detail, no matter how small the injury may appear. Be sure to list all of the body parts that were injured in the accident, not just the areas where you feel the worst pain.

After two decades of representing firefighters, we have seen our share of members who were denied the 3/4 pensions they otherwise would have been entitled to, simply because of hastily and sloppily filled out CD-72s. That should never happen.

It is your right to ensure that the CD-72 is completed properly and to your satisfaction. Pictures of the defective condition that caused your accident are always helpful to help a jury or the pension board see for themselves what caused your injury. Noting a defect or building violation that contributed to your accident, along with documenting for yourself the names of witnesses, will help you in all respects.

Another real-life mistake reminds us to caution you not to omit critical details. Don’t write “I stepped off a rig and my knee buckled” if in fact your knee buckled only because there was a defect on the step or on the surface of the roadway or sidewalk. The firefighter who wrote the brief description of his knee injury was denied his ¾ disability pension because he failed to note that he stepped into a hole on the sidewalk. Remember: Be specific about noting any and all defects which contribute to your accident.

Please bear in mind that litigation against negligent building owners is almost always adversarial, and proceedings before the 1-B Board can become just as challenging. Do not create unnecessary problems by failing to accurately complete your CD-72s. Know your rights!

STOP PUTTING IT OFF

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Some recent visitors to our office whose future is secure because their parents took advantage of our offer.

continued from “9-11 Fund” page 1

well as people who lived, worked or attended school in Lower Manhattan or along the path taken by WTC debris on its way to the landfill — also suffered injury or illness as a result of contact with dust, smoke, and fumes. Many weren’t diagnosed with WTC-related illnesses until years after the first VCF closed. Until the James Zadroga 9/11 Health and Compensation Act reopened the VCF in 2011 (named in honor of our friend and client NYPD Detective Jimmy Zadroga), those people were excluded from compensation. Now, the Fund will compensate people who were present or near the September 11th crash sites or debris pathways between September 11, 2001 and May 30, 2002 and who suffered physical harm as a result of their exposure to the toxic dust and air that was present.

If you have been diagnosed with any of the illnesses, below, you must register with the VCF before the October 3, 2013 deadline.

You may receive compensation from the VCF if you suffered traumatic physical injury or any of the following illnesses because of your presence at or near the crash site or debris pathways:

- Interstitial lung disease
- Chronic Respiratory Disorder
- Reactive Airways Dysfunction Syndrome (RADS)
- WTC-exacerbated Chronic Obstructive Pulmonary Disease (COPD)
- Chronic cough syndrome
- Chronic problems with nasal passages and other airways
- Gastro-Esophageal Reflux Disorder (GERD)
- Sleep apnea exacerbated by or related to the above conditions
- Low back pain
- Carpal tunnel syndrome
- 62 types of cancer
- Certain other musculoskeletal disorders

No law firm in the country has represented as many 9/11 firefighters as the attorneys at Barasch McGarry. We can provide the guidance you need. All consultations are free and confidential. Please take the time to learn your legal rights and bear in mind the strict deadline to register.

WHAT KIND OF LIFE INSURANCE IS APPROPRIATE FOR FIREFIGHTERS?

How Much Life Insurance is Enough?

When it comes to life insurance, there isn’t a “one size fits all” solution for all firefighters. The amount of life insurance that you need is dependent on your family’s needs. What is your income? Does your spouse work outside the home? What is her income? How much is remaining to pay off your mortgage? How many kids do you have? Are they young or out of college and no longer your dependents? How much is your pension worth? Have you reached 20 years? What does your spouse need (and *vice versa*) if one of you passes away? You should discuss your family’s specific needs with a financial consultant.

Term or Permanent Life Insurance?

Life insurance is a means of providing our loved ones with financial security. Because we have done nearly 2,000 free simple wills for active firefighters, we are often asked “what kind of life insurance do you think my wife and I need to have?” While we certainly recommend that you talk to a licensed insurance agent, here are some things to think about.

There are basically two types of life insurance for you to consider – Term and Permanent.

continued on page 4

In Memorium: Vincent Barone

On February 7th we attended the plaque dedication at Engine 55 for our friend, Lt. Vincent Barone. We are honored to have known him. Captain Richard Sautner ran the event and delivered a moving eulogy to the huge turnout of firefighters and FDNY brass. Vinny’s wife Laura, and his four children, will certainly never forget this very special day.



WHY YOUR SPOUSE NEEDS LIFE INSURANCE

How Much Would It Cost to Replace Your Spouse's Services?

It takes a lot of effort to run a household, and the work that each spouse contributes is invaluable. If something were to happen to our spouse, everything he or she does, be it child care, chauffeuring, shopping, cooking, homework helping, etc., would have to be done by someone else.

Perhaps the best way to illustrate how critical life insurance is, is to tell the true story of Frank and Jennifer (we have changed their names to protect their privacy). Frank was a 10-year veteran firefighter in Brooklyn when his wife Jennifer passed away after a valiant struggle with breast cancer. Like many of our clients, Frank had a second job in construction while Jennifer cared for their three children, ages 8, 6, and 3. When Jennifer passed away, Frank was forced to give up his second job in order to spend more time with his children. Frank also had to hire people to care for his children and his home when he was at the firehouse. The double whammy of losing his second job and increased childcare expenses were enough to bankrupt his family.

Please don't let this happen to you. Take the time to discuss your family's life insurance needs with your spouse and make responsible decisions. It isn't just the loss of a salaried spouse that can wreak financial havoc on a family. The work of a stay-at-home spouse is tremendously valuable, and should be insured. While we aren't in the life insurance business, it would be our pleasure to confidentially discuss your estate planning needs with you. Please take advantage of our free offer. It is our pleasure to be there for you.



continued from "Life Insurance" page 3

1. Term Life Insurance is usually purchased for a specific period of time (10, 20 or 30 years), which means your premiums are locked in for that period. It does not "expire" and can usually be renewed with guaranteed insurability (no medical exam) if you feel that you still need the coverage.

2. Permanent Life Insurance (also known as Cash Value Life Insurance) has several product lines ... Whole Life, Universal Life and Variable Life policies. Each works a bit differently than the others, but there are several distinct factors that are similar. For each, some money goes to pay the insurance premium and some goes to a "savings" account. You can borrow money from the savings account, tax free, but, when you borrow from that account, the

face value of your policy will decrease.

Term life insurance is cheaper than Permanent life insurance, which means that the average middle-income family will likely not be able to afford the premium to buy sufficient Permanent life insurance.

"Buy Term and Invest the Difference"

Buying Term life insurance is normally adequate for the needs of most firefighters and their families. Many financial advisors recommend that you take the difference of what you would spend on permanent life insurance and invest in a Roth IRA. Banks and other financial institutions won't normally charge their clients to borrow from their IRA account and, if you die, your beneficiaries will get a larger insurance

award and also get the money in your IRA.

If you start paying life insurance premiums early in your career, Permanent life insurance may have certain advantages and can surely be an integral part of your financial plan (if you can afford the premiums). But once again, for the needs of the average firefighter family, Term life insurance may be better suited to protect your family should a premature death occur. Again, we recommend that you seek the advice of a financial advisor who you are comfortable with, and consider a second opinion as well.

Of course the attorneys at Barasch McGarry are always happy to have a confidential talk with you at any time.

This is the FIFTY-THIRD edition of the BARASCH McGARRY SALZMAN & PENSON NEWSLETTER... attorney advertising which presents topics of interest to firefighters. For questions, additional copies, or more information about topics raised in this newsletter, call or write:

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