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VILLAGE OF BUFFALO GROVE TO APPEAL ENHANCED PENSION RULING TO THE APPELLATE COURT

The 100-percent line of duty death pension benefit award does not meet the legal standard for this enhanced pension benefit and represents what could be a dangerous and costly legal precedent.

Buffalo Grove, Illinois – The Village of Buffalo Grove will appeal to the Second District Appellate Court a 100-percent line of duty death pension benefit award, approved by the Buffalo Grove Firefighters’ Pension Board in 2018, and most recently upheld by a Lake County Circuit Court Judge.

The Village believes that the widow of Kevin Hauber is entitled to a surviving spouse benefit, which is equal to 75-percent of Mr. Hauber’s final salary of \$101,549.28, or \$76,161.96 annually. The Firefighters’ Pension Board awarded the additional pension benefit of \$25,387.32 annually to Mrs. Hauber under the premise that his firefighter/paramedic service caused his colon cancer, a disease he ultimately succumbed to in January of 2018.

“We continue to mourn the loss of Kevin Hauber and are grateful for the contributions he made to our community; however, we are also required to uphold our core obligation to be responsible stewards of property tax payers’ funds,” said Dane Bragg, Village Manager. “The Village of Buffalo Grove believes that the burden of proof to receive the additional pension benefit was not met under the statutory requirements.”

Over the life of the pension award, the Village conservatively estimates that an additional \$1.7 million in benefits will be paid to Mrs. Hauber due to the line of duty death award. Pension contributions are made through a combination of property taxes and firefighter salary contributions. Firefighter contributions are fixed by State Law; therefore, any additional pension liability will be paid for by property tax payers in the Village of Buffalo Grove.

This is the first known decision in the State of Illinois where a firefighter’s widow has been awarded the maximum 100% line of duty death pension without having to prove that specific acts of duty during the firefighter’s service actually caused (or contributed to) the death. This case represents a dangerous potential outcome for an already stressed pension system - not only for the Village of Buffalo Grove, but for 297 municipalities and fire protection districts throughout Illinois.

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Buffalo Grove 100-Percent Line of Duty Death Pension Benefit Case

Timeline:

In 2014, Buffalo Grove Firefighter/Paramedic (FF/PM) Kevin Hauber was diagnosed with colon cancer. Due to the intensity of his treatments, he applied for a line of duty disability pension. He later withdrew his application and returned to work full-time.

In 2017, FF/PM Hauber was no longer able to perform his job duties and applied for an occupational disease disability pension. At that time, the Fire Pension Board selected three independent medical examiners (IMEs) to review the data to determine whether his colon cancer directly resulted from his performance of duties as a FF/PM.

FF/PM Hauber died in January of 2018, prior to when all of the IME reports were received. After his death, Mr. Hauber's widow, Kimberly Hauber, filed a 100-percent line of duty death pension application, which would equal to FF/PM Hauber's final salary of \$101,549.28, annually. In the interim, until the IMEs were received, the Pension Board awarded Mrs. Hauber an interim 75-percent non duty related surviving spouse pension, which represents an award of \$76,161.96 annually.

On March 23, 2018, a hearing was held on both the line of duty death pension application and the occupational disease pension. The Village requested and was allowed to intervene at the hearing, only if the intervention did not delay the Pension Board's decision that day. The Village was able to present information regarding why the line of duty death pension benefit was not justified and did not meet statutory requirements. The Village was not able to speak to the doctors or conduct further investigation as the Pension Board stated that the intervention would only be allowed if their decision was not delayed.

At the March 23, 2018 hearing, the Buffalo Grove Fire Pension Board voted 3-2 that Mrs. Hauber was entitled to the line of duty death pension benefit (100-percent of FF/PM Hauber's final salary). The Pension Board met again and affirmed the decision on May 14, 2018 and approved the Findings of Fact.

On June 20, 2018, the Village filed an appeal of the award. The complaint was filed for Administrative Review in the Circuit Court of the 29th Judicial Circuit in Lake County.

On February 5, 2019, a Lake County Circuit Court Judge upheld the Buffalo Grove Fire Pension Board decision (made on March 23, 2018).

On March 6, 2019, the Village of Buffalo Grove filed an appeal to the appellate court relating to the February 5, 2019 ruling in the Lake County Circuit Court, on the grounds that the statutory requirements and burden of proof to validate the award of a 100-percent line of duty death benefit, have **not** been met.

Key Points for this Case:

1. Kevin Hauber was a beloved member of the Fire Department and the Village of Buffalo Grove continues to mourn his loss. The Village has the deepest of sympathies for both the Hauber family and the Fire Department family.

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2. The Village has no objections to Mrs. Hauber receiving a non-duty related surviving spouse pension, that would provide her with 75-percent of FF/PM Hauber's salary, which would be \$76,161.96 (75-percent of FF/PM Hauber's final salary of \$101,549.28).
3. A line of duty death pension for a colon cancer death is unprecedented in the State of Illinois. The Buffalo Grove Fire Pension Board ruling has the potential to be precedent-setting for all Fire Pension Boards in Illinois (total of 297 fire pension boards).
4. The Buffalo Grove Fire Pension Board used an improper legal standard to award the line of duty death pension benefit. The Board inappropriately relied on the standard for an occupational disease disability, to instead award a line of duty death pension benefit.
5. Though the petitioner had to prove that a preponderance of the evidence showed that a duty-related incident was a "causative factor" to the illness – **no sufficient evidence was provided** that FF/PM Hauber was exposed to any known carcinogens as a result of his work as a FF/PM with Buffalo Grove.
6. As stated by at least one doctor who provided an IME for the Buffalo Grove Fire Pension Board members, the substantial majority of studies show there is **no** relation between colon cancer and firefighting. One study in the minority was noted as the most comprehensive, which showed there is only a half of a percentage point (.5-percent) of increased risk of colon cancer for firefighters in the study, compared to the general public.
 - a. Firefighters studied were members of the Philadelphia, Chicago, and San Francisco Fire Departments, which respond to substantially different calls than Buffalo Grove Firefighters.
 - b. Generally, 2/3 of the calls that firefighters in suburban areas respond to in and around Buffalo Grove are EMS calls. In Buffalo Grove, less than 5-percent of calls involve a fire that has left the room of origin.
7. Conservatively, the Village estimates the difference between what Mrs. Hauber is eligible to receive, and what she was awarded will equate (conservatively) to \$1.7 million dollars of additional liability to the pension fund.
 - a. The Pension Board decision in this case (if it stands) will ultimately be funded directly by Buffalo Grove property tax payers through their property tax bills. None of the potential financial burden falls on current firefighters.
8. If each (outside of Chicago) fire pension fund (297 total) in Illinois had only one (1) case of this nature, it would equate to an additional half billion dollars of pension liability for Illinois taxpayers.

Key Points Regarding Public Safety Pensions in Illinois

1. By State Statute, public safety pension boards are made up of three pension fund beneficiaries (firefighters-active or retired), and two 'at-large' members appointed by the municipality.
 - a. Firefighters have the majority of votes for all pension matters coming before the Board. In this case, three firefighters who worked with FF/PM Hauber were put in the position to decide upon the level of benefits that would be received by his widow and their four children.
 - c. This creates a situation where emotion has the potential to influence decisions.

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2. The amount that public safety employees (outside of Chicago) are required to contribute to their pension fund is established by State law. It is fixed at 9.455-percent of the employee's salary. Therefore, if there is an enhanced benefit awarded, which is controlled by public safety employees, the municipality must make up the difference in the liability with taxpayer dollars (most commonly property tax) and limited investment returns.

3. The Village's action to appeal the pension award is based on the direct impact on property tax liability to its residents and businesses, and indirectly on the potential impact to all property tax payers in Illinois. Municipalities throughout Illinois continue to struggle with funding public safety pensions, and the additional liability that this case could create is a serious concern for an already broken pension system, and for the State of Illinois.

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