City of Bellevue

Human Resources Department

Date: **July 1, 2015**

To: **LEOFF 1 Disability Board members**

From: **Paula Dillon x 7198, Human Resources**

RE: **Tuesday, July 7, 2015 Regular Meeting**

Please review the attached Agenda packet for the upcoming LEOFF 1 Disability Board meeting on Tuesday, July 7, 2015. The meeting will be held in Room 1E-118.

Attachments

Distribution List

Disability Board Members:

Susan Neiman, Chair
Lynne Robinson, Councilmember
John Stokes, Councilmember
Wayne Bergeron, Fire Department
Bryan Reil, Police Department

Other Copies:

Siona Windsor, City Attorney's Office
Kerry Sievers/Julie Howe, Human Resources
Paula Dillon, Human Resources
Kim McCool, Council Coordinator
Sandra Nunnelee, Council Coordinator
Mark Risen, Fire Department
Steve Mylett, Police Department
Michelle Cash, Minutes taker – without attachments

City of Bellevue

Disability Board

Agenda Regular Meeting
City Hall, Conference Room 1E-118

Date: Tuesday, July 7, 2015

Time: 5:30 pm Administrative Meeting
6:00 pm Business Meeting

I. Call to Order

II. Roll Call

III. Approval of Minutes of Regular Meeting, June 2, 2015

IV. Process for Considering Disability Leave

V. Executive Session

VI. Consideration of Applications for Disability Allowances

- **A.** Applications for Disability Allowances
  - 1) Fire Department
- **B.** Applications for Disability Allowances Greater than 1 month
  - 1) Fire Department

VII. Consideration of Medical Claims

- **A.** Routine claims
- **B.** Special claims
- **C.** Pre-Approved Recurring Long-Term Care Claims

VIII. Staff Reports

VIII. Unfinished Business

IX. New Business

X. Announce Date & Time of next meeting: Tuesday, August 4, 2015

XI. Adjournment

CITY OF BELLEVUE
LEOFF 1 DISABILITY BOARD
Meeting Minutes

June 2, 2015 Conference Room 1E-118
5:30 p.m. – Administration Bellevue City Hall
6:00 p.m. – Business Meeting

MEMBERS PRESENT: Chairperson Susan Neiman
Boardmember Wayne Bergeron
Boardmember Bryan Reil
Councilmember Lynne Robinson
Councilmember John Stokes

OTHERS PRESENT: Paula Dillon, Human Resources
Siona Windsor, City Attorney's Office

MINUTES TAKER: Michelle Cash

I. CALL TO ORDER

The meeting was called to order at 6:04 p.m. by Chair Neiman.

II. ROLL CALL

III. APPROVAL OF MINUTES

Motion by Councilmember Stokes and second by Councilmember Robinson to approve the May 5, 2015 LEOFF 1 Disability Board meeting minutes as presented. Motion carried unanimously (5-0).

IV. CONSIDERATION OF APPLICATIONS FOR DISABILITY ALLOWANCES

A. Applications for Disability Allowances

None.

B. Applications for Disability Allowances Greater than 1 month

None.

V. CONSIDERATION OF MEDICAL CLAIMS

A. Routine Claims

Motion by Boardmember Bergeron and second by Councilmember Robinson to approve the Routine Claims as presented. Motion carried unanimously (5-0).

B. Special Claims

Motion by Councilmember Stokes and second by Councilmember Robinson to approve the Special Claims as presented.

Ms. Dillon explained that the Board paid for hearing aids for Member #134 in January, 2012. The purchase included a blue tooth device for the Member's hearing aids. However, the Member needs a new blue tooth, the old one broke and was not able to be repaired by the factory. The factory sent the Member a new hearing aid and provided an additional one year warranty.

At the question, motion carried unanimously (5-0) to approve the Special Claims as presented.

VI. PRE-APPROVED RECURRING LONG-TERM CARE CLAIMS

The pre-approved recurring long-term care claims were reviewed and included in the Board packet.

VII. STAFF REPORT

None.

VIII. EXECUTIVE SESSION

None.

IX. UNFINISHED BUSINESS

A. Out-of-Network Claims Policy Discussion

Boardmember Bergeron explained that the LEOFF 1 Members generally try to see in-network physicians, when available. The situation that occurred in 2014 where a Member thought that the selected provider was in-network but later found out the contrary was an anomaly.

Boardmember Bergeron suggested that no formal action be taken to change the policy but Members be reminded periodically to be mindful that their service providers are in-network.

Ms. Windsor cautioned that it may be problematic if the Board requires Members to utilize in-network providers. She added that the usual and customary rates (URCs) cannot be easily identified to determine the cost if an out-of-network provider is utilized.

Ms. Dillon clarified that the state mandate is that "medically necessary" claims be covered by the city. The city is currently evaluating insurance alternatives, including the Medicare Advantage Plan. If this option is selected, then the in-network versus out-of-network provider issue would be eliminated.

Councilmember Robinson explained that her intent for originally raising the out-of-network issue was to determine a way to monitor providers so a Member does not receive misinformation from a provider and then ultimately holds the city liable. She would also like to make it easier for a Member to determine if a provider is in-network. Councilmember Robinson's goal is to protect the city from paying excessive amounts for claims and also protect a Member from getting over billed. She also reiterated her request that stickers with larger numbers be placed on the insurance cards stating the phone number members should call to determine if a provider is in-network.

Councilmember Stokes views the proposed language in Item 7 of the Board packet as too broad and suggested that claims be evaluated on a case-by-case basis.

Boardmember Bergeron explained that a change in policy may make the LEOFF 1 Members feel that benefits and coverage are being reduced.

Ms. Dillon reminded Boardmembers that the annual newsletter included information about encouraging Members to utilize in-network providers.

Boardmembers discussed option for requiring Members to obtain preapproval if they want to visit out-of-network providers. However, the monitoring of this process would be too cumbersome, since staff would need to obtain a report from the provider to determine if a Member confirmed a provider's network status.

Boardmember Reil stressed that communication is vital to remind Member's to utilize in-network providers. He suggested that an all-hands meeting be conducted to discuss this issue and address any questions that may arise. Alternatively, Boardmember Reil noted that there are few out-of-network claims received and suggested that the claims continue to be treated on a case-by-case basis.

Ms. Windsor explained that providers have a huge bargaining advantage with insurance companies on their fee schedule. The fees charged (i.e., Usual and Customary Rates) are difficult to obtain for the Board to compare with claims submitted.

Boardmembers discussed the state mandate and the city's obligation to cover reasonably necessary medical charges.

Overall, Boardmembers concurred that an all-hands meeting is desired but should be delayed until a decision has been made regarding the alternate insurance options (i.e., Medicare Advantage Plan). However, Boardmembers requested that the fall newsletter include a reminder for Members to utilize in-network physicians when available.

X. NEW BUSINESS

None.

XI. ANNOUNCE DATE & TIME OF NEXT MEETING

The next Disability Board meeting will be held on July 7, 2015.

XII. ADJOURNMENT

By general consensus, the meeting was adjourned at 7:06 p.m.

Disability Board
Agenda Item No. 4
JULY 7, 2015

☒ Action
☒ Discussion
☐ Information

Subject: Reconsideration of Board's February 4, 2015 decision approving Member 69s disability leave on January 16, 2015 as non-duty related.

Contact: Paula Dillon – Human Resources

Background:

On February 4, 2015, the Disability Board considered the disability leave application for Member 69. The application indicated that on January 16, 2015 Member 69 took 9 hours of leave related to surgically removing skin cancer. Member 69 did not submit medical documentation with his disability leave application demonstrating that his medical condition was duty related. Under the criteria established in Section V.10 of the LEOFF 1 Disability Board Policies and Procedures, the Board approved the disability leave as non-duty related. Member 69 has now submitted medical information for the Board's reconsideration on the issue of whether his leave was duty related.

Attached to this agenda memo is an August 22, 2013 memo from Siona Windsor, Attorney to the Disability Board. It describes the process for considering disability leaves. Under Section V.10 the applicant for disability leave has the burden of proof to demonstrate to the satisfaction of the board that he/she has presented sufficient information to allow the Board to reasonably conclude that the injury or illness was the result of work activity.

The only medical evidence Member 69 has submitted to the Board is a March 6, 2015 letter from his treating physician for cutaneous malignancy Basal Cell Carcinoma. The physician's letter states that "firefighters in the nature of their work are exposed to many **potentially** toxic substances with **possible** adverse effects on their health". (emphasis added) The letter also states that "Environmentally, firefighter are often exposed to the outdoors and ultraviolet light which is a known inducer of cutaneous, malignancy including Basal Cell Carcinoma and on this basis **may contribute** to the development of cutaneous malignancies in [Member 69] along with any other non-occupationally related ultra violet light exposure". (emphasis added)

The question for the Board is whether it can reasonably conclude from Member 69's treating physician letter that the Basal Cell Carcinoma cancer is the result of his work activity. The Board's attorney will be available to answer questions from the Board members about this question.

If the letter does not meet this standard, than the Board should again determine that the leave was not the result of work activity. If the Board can reasonably conclude that Member 69's medical information establishes that his Basal Cell Carcinoma is the result of work related activity, the Board should grant his request for the leave being duty related. If the Board is unable to make a decision to grant or deny the application, based on the information presented, it may ask for a second opinion from its own physician on whether the condition is work related.

Finally, the February 16, 2015 letter from attorney Ron Meyer to the Disability Board is not medical evidence.

Options:

1. Deny the request for reconsideration because the Board cannot reasonably conclude from the information presented that Member 69's Basal Cell Carcinoma is work related.

2. Grant the request for reconsideration because the Board can reasonably conclude from the information presented that Member 69's Basal Cell Carcinoma is work related.

3. Request a second opinion from its own physician on whether the Basal Cell Carcinoma is work related.

Attachments:

1. Memo to the Board dated August 22, 2013

2. Copy of Policies and Procedures section V.10. Determination of Duty or Non-Duty Related Disability Leave

3. Member 69 Dermatologist Response to Duty Related Leave Application letter

4. Member 69 Attorney Response to Duty Related Leave Application Letter

5. American Cancer Society – What is Melanoma Skin Cancer?

City of Bellevue

Memorandum

Date: August 22, 2013

To: Chairman Neiman and Disability Board Members

From: Siona D. Windsor, Attorney to the Disability Board

RE: Process for Considering Disability Leave

Infrequently, the Board is presented with a request for disability leave where it is not apparent on the face of the request whether the disability is duty related or not. This occurred recently and highlights an opportunity for review of the appropriate process for considering the question of whether a disease or injury is duty related.

The Board's Policies and Procedures (Restated 2008) under Section V, Paragraph 10 (page 14 – attached) states that it is the LEOFF 1 active member's burden of proof to present sufficient information that allows the Disability Board to reasonably conclude whether an injury is duty related. Essential information would include physicians' statements.

In some cases such as diseases involving cancer, it would be virtually impossible for the Board to determine whether a disease is duty related or not without some medical information presented addressing the LEOFF I member's specific disease and its origin.

The LEOFF 2 workers compensation statute lists certain diseases for which there exists a rebuttable presumption the disease is occupationally related. These diseases are:

1. Respiratory disease (as long as the firefighter does not smoke and has no history of regular tobacco use)
2. Heart problems experienced within 72 hours of exposure to smoke, fumes, or toxic substances or experienced with 24 hours of strenuous physical exertion due to firefighting activities
    a. Caveat: this presumption applies only if the firefighter does not smoke and has no history of regular tobacco use
3. Certain cancers (prostate cancer diagnosed before age 50, primary brain cancer, malignant melanoma, leukemia, non-Hodgkins lymphoma, bladder cancer, ureter cancer, colorectal cancer, multiple myeloma, testicular cancer and kidney cancer) but only **<u>if</u> the firefighter has served at least 10 years and had a qualifying medical examination upon becoming a firefighter that showed no evidence of cancer.**

4. Infectious diseases (human immunodeficiency virus/acquired immunodeficiency syndrome, all strains of hepatitis, meningococcal meningitis, and mycobacterium tuberculosis.

Again, this presumption does not exist for LEOFF 1 members as they are not covered by the statutes governing worker's compensation. However, the Board has seen in the past that some doctors do take these presumptions into consideration in analyzing whether a disease is duty related. The Board however cannot rely solely on this LEOFF II worker's compensation rebuttable presumption in making its determination without some medical information related specifically to the employee.

Also for clarification purposes the American Cancer Society web site indicates that malignant melanoma does not include many skin cancers including basil cell and squamous cell skin cancers.
http://www.cancer.org/cancer/skincancer-melanoma/overviewguide/melanoma-skin-cancer-overview-what-is-melanoma

I will be happy to address any questions about this at our next regular meeting on September 3, 2013.

CITY OF BELLEVUE DISABILITY BOARD

POLICIES AND PROCEDURES

Effective Date: MARCH 1996

Restated: October 2008

V. Disability Board Procedures Disability Leave for LEOFF I Active Members

10. Determination of Duty or Non-Duty Related Disability Leave

Disability leave will be considered duty related when, to the satisfaction of the Disability Board, the LEOFF I active member presents information that allows the Disability Board to reasonably conclude that the injury or illness was a result of work related activity. The burden of proof shall be upon the applicant. The LEOFF I active member may either appear personally or submit written evidence to support the disability leave request. Essential information would include, but not be limited to, any relevant dates or incident numbers, physician statements, or an explanation of contributing work conditions. The explanation of "public contact" is too general to allow a finding of duty relatedness. An LEOFF I active member should be able to identify relevant public or co-worker contacts or work conditions that the member believes justify a duty related finding.

Member 69 - Medical Record Redacted

[redacted]

RON MEYERS & ASSOCIATES PLLC
ATTORNEYS & COUNSELORS OF LAW

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June 1, 2015

City of Bellevue
Disability Board
Attn: Paula Dillon
PO Box 90012
Bellevue, WA 98009

Re: Member 69
Appeal to Decision dated February 4, 2014

Dear Ms. Dillon:

Our office protested this City of Bellevue LEOFF 1 Disability Board decision dated February 4, 2015 on February 16, 2015. I have enclosed a copy of that letter for your information. To date, we have not had a response regarding this protest. Please provide our office with an update as to the status of this matter. Thank you.

Very Truly Yours,

Ron Meyers

RON MEYERS & ASSOCIATES PLLC
By: Ron Meyers
Attorney at Law
ron.m@rm-law.us

Enclosure - as stated

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February 16, 2015

City of Bellevue
Disability Board
Attn: Paula Dillon
PO Box 90012
Bellevue, WA 98009

Re: [redacted] Member 69
Appeal to Decision dated February 4, 2014

Dear Ms. Dillon:

This is in response to the decision of the City of Bellevue LEOFF 1 Disability Board dated February 4, 2015, [redacted] requests the Disability Board change its determination from "non-duty" related to "**duty**" related based upon the following:

This claim arises out of an injury and/or occupational disease.

A cause of a condition is a proximate cause if it is related to the condition in two ways: (1) the cause produced the condition in a direct sequence, and (2) the condition would not have happened in the absence of the cause.

There may be one or more proximate causes of a condition. For a worker to be entitled to benefits under the Industrial Insurance Act, the work conditions must be a proximate cause of the alleged condition for which entitlement to benefits is sought. The law does not require that the work conditions be the sole proximate cause of such condition.
WPI 155.06.03 Proximate Cause—Rejected Claim—Alternative

Skin cancer among firefighters is a firefighter occupational disease. Such cancers include, but are not limited to, basal cell cancer, squamous cell cancer, and lymphoma of the skin. Each case of firefighter skin cancer is relevant to all other firefighter occupational claims of skin cancer because such occurrences make the occupation of firefighting a more likely cause of the skin cancer.

A skin cancer cluster has been identified in the City of Bellevue Fire Department, including at least four other firefighters. The City of Bellevue continues to discriminate against occupational disease claims involving firefighters and continues to deny firefighter skin cancer claims.

An occupational cluster of firefighter skin cancer is evidenced by the identification of firefighter skin cancer cases in Yakima, Seattle, Bellevue, Tacoma, Everett and other fire departments throughout the state of Washington. Some of the firefighter skin cancer cases even involve areas of the body not typically exposed to sunlight.

The commonality in these skin cancer cases is the occupation of fire fighting with exposure to smoke, fumes, and toxic substances, including known and suspected carcinogens, sun exposures during work, disruptions of the circadian rhythm and other exposures. Additionally, the cause of skin cancer is not known in approximately 50% of all skin cancer cases, so firefighter occupational exposures, and the number of fire fighters diagnosed with skin cancer, is relevant to causation in all cases.

Skin, lung and bladder cancers are among the types of cancer most often linked with high-level exposure to workplace carcinogens. Other cancers such as leukemia, lymphoma, testicular, and brain cancer may also occur in clusters. Most well-documented cancer clusters have been found in the workplace, where exposures to certain compounds or other factors tend to be higher and last longer. Also, the group of exposed people is better defined and easier to trace in workplace groups. In fact, the links between cancer and many cancer-causing agents (called carcinogens) were first found in studies of workers. *Source: The American Cancer Society.*

Peer Reviewed Research

(1) **Cancer Incidence Among Firefighters in Seattle and Tacoma, Washington.** *Cancer Causes and Control*, Volume 5, 1994:

"A complex mixture of toxic gases, fumes and particulates is produced when buildings and their contents burn. Although the combustion of traditional materials may produce toxic substances, firefighters probably are exposed to a greater variety now than in the past due to increasing production of plastics and other synthetic compounds into building materials and furnishings. The most commonly observed carcinogens in fire smoke are benzene and polycyclic aromatic hydrocarbons, such as benzopyrene. Potential carcinogens to which firefighters may be exposed less frequently or at low concentrations include polychlorinated dibenzofurans and dibenzo-a-dioxins, formaldehyde, metals, chromium and cadmium, aromatic amines, and various chlorinated substances."

"Exposure to a wide variety of other substances is possible, especially when fighting commercial or industrial fires, and current techniques used to detect toxic substances in smoke may be inadequate. The composition of smoke may vary greatly from fire to fire, yet it is likely that the smoke from most fires contains known or suspected carcinogens."

(2) **Registry-Based Case-Control Study of Cancer in California Firefighters.** *American Journal of Industrial Medicine*, 2007:

"Firefighters are exposed to numerous combustion products. These include polycyclic aromatic hydrocarbons (PAH's), formaldehyde, benzene, chromium compounds, dioxins, asbestos, particulates and arsenic, all of which are known or strongly suspected carcinogens."

(3) **Cancer Incidence in Florida Professional Firefighters, 1981-1999.** *Journal of Occupational and Environmental Medicine*, Volume 48, 2006:

"Weaker but still plausible evidence has linked firefighting to increased mortality risk from melanoma and cancer of the rectum, colon, stomach, prostate and lung."

(4) **Cancer Incidence Among Massachusetts Firefighters, 1982-1986.** *American Journal of Industrial Medicine* at 19, pp 17-54, 1990:

"Two unexposed reference populations were used: Policeman and statewide males. Standard morbidity..."
"Firefighting is a strenuous and often dangerous occupation. In addition to the obvious safety hazards, such as smoke inhalation, falls and burns, firefighters are exposed to a variety of toxic substances. These include various carcinogens, such as asbestos, benzene and polycyclic aromatic hydrocarbons," citing Bendix, 1979 and Brand-Rauf study of 1988.
"Wether firefighters are at the excess risk of cancer due to the exposures has yet to be determined."

"One disadvantage of this study is the under reporting of occupational information to the MCR. Because occupational information is available for only approximately 50 percent of all MCR cases, the actual number of cancer cases among firefighters may be up to twice as high as is reported here.

(5) **Cancer Incidence Among Male Massachusetts Firefighters, 1987-2003.** *American Journal of Industrial Medicine*, Volume 51, pp 329-335, 208:

"Firefighters are known to be exposed to recognized or probable carcinogens. These include benzene, polycyclic aromatic hydrocarbons, benzo (a) pyrene, formaldehyde, chlorophenols, dioxins, ethylene oxide, orthotoluidine, polychlorinated biphenyls, vinyl chloride, methylene chloride, trichloroethylene, diesel fumes, arsenic and asbestos."

(6) **Cancer Risk Among Firefighters: A Review and Meta-analysis of 32 Studies.** *Journal of Occupational and Environmental Medicine*, Volume 48, Number 11, 2006:

"To date, only one meta-analysis conducted by Howe and Burch in 1990 examined the extent of cancer risk among firefighters in 11 mortality studies. They reported there was an increased association with the occurrence of brain tumors, malignant melanoma, and multiple myeloma with the evidence in favor of causality somewhat grater for brain tumors and multiple myeloma."

(7) ***Firefighter Cancer in the New Fire Environment.*** Ohio Bureau of Workers Compensation, 2012:

"Firefighter exposed to chemicals generated from combustion of synthetic materials face increased risks of:

Cancer, including that of the prostate
Heart disease
Adverse developmental outcomes"

(8) ***Cancer Epidemiology and Prevention, Third Edition.*** Oxford University Press 2006

"The occurrence of skin cancers in the occupational setting has played an important historical role in carcinogen discovery (Hueper, 1963), beginning with Percival Pott's description of scrotal skin cancers among chimney sweeps in 1775. Although only a limited number of epidemiologic studies are availabe, high dermal polycyclic aromatic hydrocarbon (PAH) exposure in the occupational setting is a potential etiologic factor for Keratinocyte carcinomas (basal and squamous cell carcinomas of the skin) . . ."

"Polycyclic aromatic hydrocarbons comprise a large family of chemical compounds that are produced during incomplete combustion of organic materials, and in particular fossil fuels."

"the earliest known occupational carcinogens were coal-derived soots, oils, and fumes that cause skin cancers."

Although Title 51 is instructive for its strong public policies favoring workers, requirements of the statute may not be applied in Law Enforcement and Fire Fighter Plan 1 cases. Chapter 41.26 RCW governs the law enforcement officers' and firefighters' retirement systems, including determining disabilities incurred in the line of duty. It is clear that in 1971, the legislature contemplated that LEOFF firefighter's disability findings would be determined under the authority of Chapter 41.26 RCW.

RCW 41.26.270:
The legislature of the state of Washington hereby declares that **the relationship between members of the law enforcement officers' and firefighters' retirement systems and their governmental employers is similar to that of workers to their employers** and that the sure and certain relief granted by this chapter is desirable, and a beneficial to such law enforcement officers and firefighters as workers' compensation coverage is to persons covered by Title 51 RCW. **The legislature further declares that removal of law enforcement officers and firefighters from workers' compensation coverage under Title 51 RCW necessitates the (1) continuance of sure and certain relief for personal injuries incurred in the court of employment or occupational disease, which the legislature finds**

> **to be accomplished by the provisions of this chapter** and (2) protection for the governmental employer from actions at law; and to this end the legislature further declares that the **benefits and remedies conferred by this chapter upon law enforcement officers and firefighters covered hereunder, shall be to the exclusion of any other remedy, proceeding, or compensation for personal injuries or sickness, caused by the governmental employer** except as otherwise provided by this chapter; ad to that end all civil actions and civil causes of actions bu such law enforcement officers and firefighters against their governmental employers for personal injuries or sickness are hereby abolished, except as otherwise provided in this chapter. [underline bold emphasis added]

It is clear that the legislature's use of the word **"shall"** mandated that local disability boards would be the agencies to adjudicate claims of injuries or occupational diseases incurred in the line of duty for law enforcement officers and firefighters covered under the LEOFF 1 plan. LEOFF Plan 1 law enforcement officers and firefighters were removed from the coverage of Title 51.

Law enforcement officers or firefighters who have been accepted in the LEOFF system prior to October 1, 1977 are exempt for coverage under the Industrial Insurance Laws of RCW Title 51.

> **RCW 41.26.020 Purpose of chapter.**
> The purpose of this chapter is to provide for an actuarial reserve system for the payment of **death, disability, and retirement benefits** to law enforcement officers and firefighters, and to beneficiaries of such employees, **thereby enabling such employees to provide for themselves and their dependents in case of disability or death**, and effecting a system of retirement from active duty. [bold underline emphasis added]

> **RCW 41.26.030(5)(a):**
> "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance, disability allowance, death benefit, or any other benefit described herein.

A worker shows that his disease was proximately caused by his work if he establishes that he would not have contracted the disease, but for the aggravating condition of his job. *Dennis v. Department of Labor and Indus.*, 109 Wash.2d 467, 477, 745 P.2d 1295 (1987). The worker must establish, by competent medical testimony, that his job probably (as opposed to possibly) caused his disease. *Dennis*, 109 Wash.2d at 477, 745 P.2d 1295:

> To establish that a disease arose "naturally" out of his or her employment, a worker must show:
>
> > That his or her occupational disease came about as a matter of course as a natural consequence or incident of distinctive conditions of his or her particular employment. The conditions need not be peculiar to, nor unique to, the worker's particular employment. Moreover, the focus is upon conditions giving rise to the

> occupational disease, or the disease-based disability resulting from work-related aggravation of a nonwork-related disease, and not upon whether the disease itself is common to that particular employment. The worker, in attempting to satisfy the "naturally" requirement, must show that his or her particular work conditions more probably caused his or her disease or disease-based disability than conditions in everyday life or all employments in general; the disease or disease-based disability must be a natural incident of conditions of that worker's particular employment. Finally, the conditions causing the disease or disease-based disability must be conditions of employment, that is, conditions of the worker's particular occupation as opposed to conditions coincidentally occurring in his or her workplace.

Nowhere does LEOFF define the concept of "in the line of duty," nor do the parties direct us to a definition located elsewhere in statutory or administrative law. Nevertheless, in *Doke v. United Pac. Ins. Co.*,15 Wash.2d 536, 543-44, 131 P.2d 436 (1942), the Washington State Supreme Court found the phrase unambiguous.

In *Doke,* a Washington National Guard soldier was injured while crossing the street on his way to the guard's weekly drill formation. *Doke* quoted an opinion of the United States Attorney General in holding that "the line of duty" in the context of military service means "in consequence of the ordinary performance of [one's] military duty, or in the performance of any special act of military duty...." 15 Wash.2d at 543, 131 P.2d 436. *Doke* is particularly relevant here because police officers may be likened to the civilian counterparts of guardsmen.

Other cases provide further examples of the concept of disability incurred in the line of duty. In *Allen v. Thurston County Fire Prot. Dist. No. 9*, 68 Wash.App. 1, 841 P.2d 1265 (1992), a fire chief was disabled in the line of duty when he suffered a heart attack while at work. In *Engstrom v. Seattle*, 92 Wash. 568, 159 P. 816 (1916), a public works employee was injured in the line of duty through a railroad company's negligence while performing his job for the city.

In *Dillon,* Division One reviewed a Seattle Police Pension Board decision denying "incurred in the line of duty" disability benefits to a police officer who claimed that his mental disability was duty-related. 82 Wash.App. at 170, 916 P.2d 956. The officer was granted a disability retirement when he injured his hand in 1985. In 1988, the pension board found him to be capable of working, and ordered him to return to duty. The officer did so, but became anxious and depressed because he did not believe he was physically able to perform. In 1990, he was granted a mental disability retirement. The officer contested the pension board's finding that his mental disability was not incurred in the line of duty. The Court of Appeals reversed, finding that the pension board had insufficient evidence to support its findings. It reasoned that the particular conditions of a police officer's employment required him to be physically able to handle combative suspects and dangerous situations. It ruled that the officer had presented uncontradicted evidence that he would not have become mentally disabled but for the stress caused by being forced to work with an injured hand.

Rather than it being a condition that could arise in any occupation or workplace, the officer met his burden of showing that his mental disability naturally and proximately resulted from his concern over his inability to perform his specific police duties. *Dillon,* 82 Wash.App. at 173, 916 P.2d 956.

> The court construes an ambiguity in the statutes governing the Law Enforcement Officers' and Fire Fighters' Retirement System, Plan I (LEOFF I), by construing each statute in light of the entire statutory scheme, in the manner that best advances the legislature's purpose, and, if otherwise in doubt, **liberally in favor of the LEOFF I member**. RCW 41.26.005. [bold underline emphasis added]

Although courts may sometimes gives substantial weight to an agency's view of a statute, **the court should not do so when the agency's view rests on flawed reasoning**. *Shurtliff v. Department of Retirement Systems*, 103 Wash.App. 815, 15 P.3d 164 (2000). Title 51 does not apply in this case – other than to stand for the proposition that injured worker claims are to be liberally construed in favor of the injured worker.

Member 69 occupational disease arises from his hundreds of individual and cumulative exposures to smoke, fumes and toxic and chemical substances. From (1) his diesel fume exposures in fire stations, (2) diesel fume exposures at fire response calls and emergency medical calls, (3) every fire that he has worked – not just those that left him coughing up black phlegm and blowing black mucous from his nose for days afterward, (4) the second hand smoke he was exposed to in fire stations, (5) exposures to chlorine and solvents used in cleaning the station and equipment, and (6) exposure to sunlight during work – the cumulative effect is substantial.

Member 69 respectfully requests the Disability Board reverse its finding of "non-duty" related and find Member 69 diagnosis of Basal Cell Carcinoma to be "duty" related.

Very Truly Yours,

Ron Meyers

RON MEYERS & ASSOCIATES PLLC
By: Ron Meyers
Attorney at Law
ron.m@rm-law.us

Melanoma Skin Cancer Overview

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WHAT IS SKIN CANCER - MELANOMA? TOPICS

What is melanoma skin cancer? GO »

SEE A LIST »

Previous Topic

What is cancer?

Next Topic

How many people get melanoma skin cancer?

What is melanoma skin cancer?

Melanoma is a cancer that starts in a certain type of skin cell. To understand melanoma, it helps to know a little about the skin.

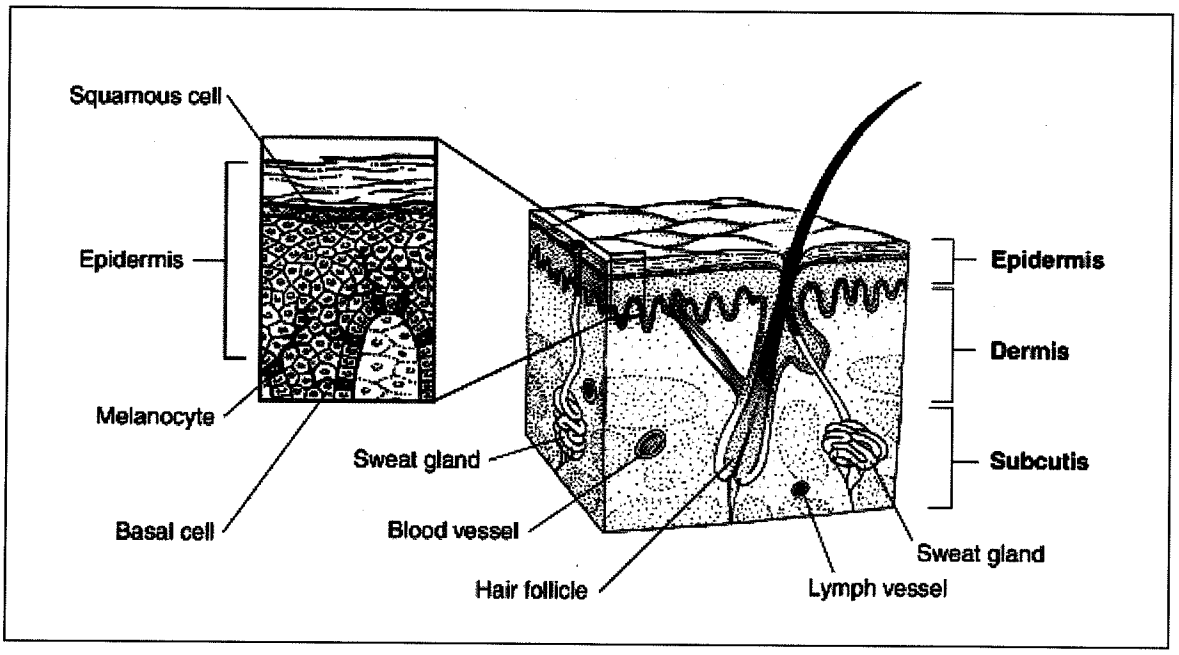
Normal skin

The skin is the largest organ in the body. It does many different things:

- Covers and helps protect the organs inside the body
- Helps to keep out germs
- Helps keep in water and other fluids
- Helps control body temperature
- Protects the rest of the body from ultraviolet (UV) rays
- Helps the body make vitamin D

The skin has 3 layers. From the outside in, they are:

- Epidermis
- Dermis
- Subcutis



Epidermis

The top layer of the skin, the epidermis, is very thin and protects the deeper layers of skin and the organs. The bottom part of the epidermis is made up of *basal cells*. These cells divide to form *keratinocytes*, which make a protein called keratin. This protein helps the skin protect the body.

The outermost part of the epidermis is called the *stratum corneum*. It is made of keratinocytes that are shed as new ones form. The cells in this layer are called *squamous cells*.

Another type of cell, the *melanocyte*, is also found in the epidermis. These cells make the brown pigment called melanin. Melanin gives the skin its tan or brown color and protects the deeper layers of the skin from some of the harmful effects of the sun. Melanocytes are the cells that can become melanoma.

A layer called the basement membrane separates the epidermis from the deeper layers of skin. It is important because when a skin cancer becomes more advanced it grows through this barrier and into the deeper layers.

Dermis

The middle layer of the skin is called the *dermis*. The dermis is much thicker than the epidermis. It contains hair shafts, sweat glands, blood vessels, and nerves.

Subcutis

The deepest layer of the skin is called the *subcutis*. It keeps in heat and has a shock-absorbing effect that helps protect the body's organs from injury.

Skin tumors that are not cancer

Most skin tumors are not cancer (they are benign). These rarely, if ever, turn into cancer. Some of them include:

- Moles (also called nevi) – benign skin tumors that start from melanocytes
- Spitz nevi – skin tumors that sometimes looks a lot like melanoma
- Seborrheic keratoses – tan, brown, or black raised spots with a "waxy" texture
- Hemangiomas – benign blood vessel growths often called strawberry spots or port wine stains
- Lipomas – soft growths made up of fat cells

- Warts – rough-surfaced growths caused by a virus

Melanoma skin cancers

Melanoma is a cancer that begins in the melanocytes. Because most of these cells still make melanin, melanoma tumors are often brown or black. But this is not always the case, and melanomas can also appear pink, tan, or even white.

Melanoma most often starts on the trunk (chest or back) in men and on the legs of women, but it can start in other places, too. Having dark skin lowers the risk of melanoma, but a person with dark skin can still get melanoma.

Melanoma can almost always be cured in its early stages. But it is likely to spread to other parts of the body if it is not caught early. Melanoma is much less common than basal cell and squamous cell skin cancers (described below), but it is far more dangerous.

Other skin cancers

Skin cancers that are not melanoma are sometimes grouped together as *non-melanoma skin cancers* because they start in skin cells other than melanocytes. These cancers include basal cell and squamous cell cancers. They are much more common than melanoma. Because they rarely spread to other parts of the body, basal cell and squamous cell skin cancers are less worrisome and are treated differently than melanoma. They are discussed in our document called ***Skin Cancer: Basal and Squamous Cell***.

Still other types of non-melanoma skin cancers are discussed in our documents called ***Kaposi Sarcoma*** and ***Lymphoma of the Skin***.

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