

Act 46 Hearing Remarks

Good morning Chairpersons Vulakovich and Costa, Chairpersons Ward and Tartaglione, Committee Members and Committee Staff. I appreciate the opportunity to testify today before this joint session of the Senate Veterans Affairs & Emergency Preparedness Committee and Labor & Industry Committee regarding Act 46 of 2011. My name is Michael Vovakes, Deputy Secretary for Compensation and Insurance in the Department of Labor and Industry.

In 2011, Act 46 created a substantial change in the workers' compensation system as it applies to firefighters. The act established a rebuttable presumption that cancer suffered by a firefighter is compensable under the Workers' Compensation Act given certain requirements are met, including required exposure and years of service. By creating this presumption, Act 46 effectively shifted the burden to insurance carriers to demonstrate that a firefighter's cancer diagnosis was not work-related. This is a significant change from other workers' compensation claims, where the claimant bears the burden to demonstrate that he or she has suffered a work-related injury.

The most immediate effect was an unwillingness among voluntary market insurers and municipal trusts to provide coverage for firefighters, given the uncertainty surrounding the impact of Act 46. The State Workers' Insurance Fund, or SWIF, therefore saw a marked increase in policies issued to cover firefighters, because employers could not readily find coverage in the private market. In 2010, prior to the enactment of Act 46, SWIF issued 89 policies covering firefighters. By 2016, that number had risen to 1,109. Volunteer fire companies currently make up approximately 5.3% of all policies written by SWIF.

In the six years before Act 46 was passed, SWIF's other business was decreasing and its overall policy count and total written premium declined. As a result of this decline, the SWIF Board took action to increase SWIF's loss cost multiplier, which impacts all premiums charged by SWIF across all of its policyholders. The impact of a reduction in total written premiums is that SWIF is left with policyholders in high risk occupations or with poor loss history, resulting in higher premiums across the board. Therefore, rate increases charged by SWIF were not charged only to policies covering firefighters. The increase in loss cost multiplier affected all SWIF policyholders.

Calculation of premiums for volunteer firefighters is particularly problematic. In a traditional employment scenario, rates are based in part on payroll. Rates for volunteer firefighters, who are not paid, are calculated based on the population of the municipality served. Because of this, smaller municipalities are particularly impacted, especially those with more than one volunteer fire company. In response, as SWIF began writing more volunteer firefighter policies, it worked with the Pennsylvania Compensation Rating Bureau and the Department of Insurance to allow municipalities that had multiple volunteer fire companies to purchase joint coverage, thus lowering overall cost.

In 2016, based on the 1,109 policies written to cover volunteer firefighters, SWIF collected approximately \$22.4 million in premium, or just over \$20,000 per policy. In turn, SWIF has had paid losses on those policies of just over \$3 million to date, with the potential for substantial additional future liability. In general, workers' compensation liabilities have a long tail and the actual total of incurred liabilities for those policies will not be known for some time.

In 2010, SWIF had 136 claims for volunteer firefighters with 79% being initially approved. By 2016, claims had risen to 761 and the approval remained fairly consistent at 75%. Three out of every four claims submitted by a firefighter were immediately approved. By comparison, SWIF's approval rate for *all* initial claims in 2016 was 65%, showing that SWIF immediately accepts more claims filed by volunteer firefighters than by other types of claimants.

Initial denials occur when SWIF does not have sufficient information to support accepting a claim. In its experience dealing with volunteer fire companies, SWIF has had difficulty in securing information from the policyholder to support the acceptance of some claims, therefore resulting in the initial denial. Of the 761 claims filed by volunteer firefighters in 2016, 192 were initially denied. However, after additional information and review, 107 of those 192 were ultimately accepted. This results in an actual denial rate of only 11%

Fundamentally, a claim by a firefighter is processed just like any other claim filed in a workers' compensation case. If the claim is identified as a cancer claim, under Act 46, SWIF is required to review the claim carefully to make sure that the unique requirements of the act are met. Those requirements include proof of four or more years of firefighting duties, direct exposure to a Group 1 carcinogen as documented in the Pennsylvania Fire Information Reporting System, and a prior physical examination. To date, SWIF has identified 28 potential claims under Act 46. Given the relatively small number of claims to date and the extended statute of limitations in Act 46, it is difficult to draw any definitive conclusions about cancer claims at this point.

Nonetheless, SWIF does have a duty to all of its policyholders to dispute liability for claims that it believes it is not required to accept under the terms of the policy. When SWIF denies a claim, the claimant can litigate that claim before the Workers' Compensation Office of Adjudication. In proceedings before a Workers' Compensation Judge, a claimant has the opportunity to present evidence, including medical testimony to establish the basis for the claim. Where the claimant develops additional evidence, SWIF may decide to stipulate to the claim, may settle the claim through a compromise and release agreement, or may allow the claim to go to decision. The adjudication process provides ample opportunity for a claimant to be heard and receive an impartial decision. As cases under Act 46 make their way to the appellate courts, additional guidance on the application of the firefighter cancer provisions will be provided to all parties in the workers' compensation system.

Act 46 has undoubtedly created challenges for SWIF and for volunteer fire companies in the commonwealth. Its true impact on all parties involved will not be fully understood for some time, as claims continue to be made and litigated.