

Fact Sheet on HR. 1786/ S.928

What is the goal of the reopened September 11th Victim Compensation Fund (VCF)

What is the goal of the reopened September 11th Victim Compensation Fund (VCF) in making its awards to injured and ill 9/11 responders and survivors suffering from the effects of the toxins at Ground Zero?

Numerous responders and survivors have become ill or injured as a result of their exposure to toxins at Ground Zero after the Government said that the air was safe. Many are disabled and unable to support themselves and their families. The VCF was reopened in 2011 to give financial assistance to those who can prove that they have suffered losses as a result of injuries caused by the September 11th attacks. It is open to responders and survivors at Ground Zero, the Pentagon, and the Shanksville crash site.

The VCF evaluates proof of 9/11-related exposure, illness, disability and financial losses, and makes an award to try to put the injured 9/11 responder or survivor in the same financial position they would be in had they not become disabled by the terror attacks. To do this, the Fund looks at what an injured 9/11 responder or survivor earned before disability, subtracts the amount of disability payments received from sources such as workers compensation and Social Security, and then issues an award intended to make up the difference, if any, so that the an injured 9/11 responder or survivor can continue to pay their family's bills, rent, mortgage, tuition, and other living expenses.

A 9/11 responder or survivor is only eligible for an award if they suffered physical injury, illness, or death as a result of the attacks and recovery effort. Every individual injured 9/11 responder or survivor that receives an award that resulted from the toxins at Ground Zero has to have had his or her physical injuries either certified or approved by the National Institute of Occupational Safety and Health (NIOSH) that runs the World Trade Center Health Program. Thus, we can be sure that only worthy an injured 9/11 responders or survivors are being compensated.

There are two general types of damages awards that are statutorily permitted: non-economic loss awards for the non-financial damage caused by an injury or illness; and economic loss for actual financial losses suffered by an injured 9/11 responder or survivor as a direct result of an illness or injury.

The amount of a non-economic loss award is directly correlated to both the severity of the type of illness diagnosed and the severity of that illness in the individual injured 9/11 responder or survivor. All awards are first calculated and then reduced by statutorily mandated offsets -- the offsets being any amount that an injured 9/11 responders or survivor has already recovered from another source for the same injury. Example of funds that are counted as an offset to an award are settlement amounts from Social Security disability payments, World Trade Center related litigation, workers compensation payments, various insurance payments for the same injuries, etc..

Some examples of non-economic loss awards that have been made by the VCF are as follows:

- \$62,726 (\$100,000 award with a \$37,273 offset) for a 54 year old NYPD member with asthma, chronic airway obstruction, chronic rhinitis, chronic laryngitis, and reflux esophagitis

which results coughing, wheezing, chest tightness and shortness of breath and is not responsive to any medications

- \$90,000 (\$90,000 with no offset) for a 53 year old NYPD member with sarcoidosis of the lungs requiring lung biopsy and five days in an ICU unit, chronic fatigue and inability to catch his breath

Some examples of non-economic loss awards for cancer victims:

- \$140,000 (\$150,000 with a \$10,000 offset) for a 62 year old female NYPD member with skin cancer on her face requiring disfiguring surgery, asthma and chronic rhinitis.
- \$173,120 (\$250,000 award with a \$76,879 offset) for a 61 year old FDNY member with lung cancer and multiple surgeries including lung lobe removal.
- \$198,825 (\$250,000 award with a \$51,174 offset) for an NYPD member with eye cancer requiring surgery and respiratory problems.
- \$250,000 (no offset) for a 41 year old volunteer/responder with thyroid cancer, a total thyroidectomy and complications of hyperthyroidism.

Depending on offsets, cancer cases result in non-economic awards typically falling between \$10,000 and \$250,000. The higher end of this range is limited to the most serious cases with no offsets.

Economic loss awards are higher because an injured 9/11 responder or survivor has been independently determined to be disabled from employment as a result of their certified World Trade Center illness. The award is designed to replace the income they have lost. Non-economic loss awards in these cases can be slightly higher because the conditions are more severe and result in disability. To qualify for an economic loss award, an injured 9/11 responder or survivor must have a disability determination based on their certified injuries by another institution, like the Social Security Administration, a state Worker's Compensation Board, N.Y.P.D., F.D.N.Y., or by the World Trade Center Health Program, etc..

Economic loss award calculations are conceptually simple. The VCF looks at what a person was earning before disability, reduces it by the state and federal taxes they would have paid, calculates the number of years the person is disabled from working based on their age at disability, and compensates them for the amount that has not been replaced elsewhere. Additionally, the awards are lower than in comparable settlements since the Fund makes awards assuming that future health care for the injuries will be covered by the World Trade Center Health Program.

Economic loss will vary depending on a number of factors unique to each Claimant. If the Claimant is totally and permanently disabled from an eligible condition, then the economic loss calculation will calculate the loss of future earnings and potential benefits for the remainder of the Claimant's work-life. If the Claimant had a past partial disability from an eligible condition, then the economic loss calculation will calculate the actual loss of prior earnings and potential benefits during the period of the Claimant's disability. If the Claimant has a partial permanent disability that will reduce his or her ability to work for the remainder of his or her work-life, then the economic loss calculation will compute the reduction in earnings and possible benefits for the remainder of the Claimant's work-life.

Whatever the award amount, **every award does nothing more than provide financial assistance for documented and provable financial losses including lost income, out of pocket medical expenses, etc. resulting from the rescue and recovery at the World Trade Center.**

Here are some examples of economic loss awards:

- A volunteer fireman from a small town in the Midwest who travelled to New York to assist in the rescue effort leaving behind his private contracting business. He became disabled at age 47 by WTC related pulmonary fibrosis (which will ultimately kill him according to his doctors), asthma, chronic bronchitis and steroid induced diabetes. He is oxygen dependent. He earned about \$31,500 per year before he became ill. He was awarded \$1,050,632 reduced by offsets of 652,628 for an award of \$398,003
- An FDNY Lieutenant who became disabled from working by severe WTC related pulmonary conditions at age 52. He was earning about \$100,000 per year at the time of his disability. His VCF award was \$1,012,392 reduced by offsets for a pension and prior lawsuit of \$404,833, for a total award of \$607,558.
- An EMT trained volunteer who showed up on September 11 to try to help. He became disabled at age 35 by chronic lower respiratory disorder, asthma, RADS and chronic upper respiratory disorders. He was earning \$30,000 per year and did not qualify for Social Security Disability insurance. He was awarded \$1,179,933 with an offset of \$104,560, which was a lump sum workers compensation payment from the New York Volunteer Fund which he accepted because he was near destitute. His total award is \$1,075,373, which represents about 30 years of earnings loss.

VCF economic loss awards are dependent on the injured 9/11 responder's or survivor's age at disability, pre-disability earnings and the offsets. While some awards may seem large, in the examples above, the injured 9/11 responder or survivor awards are based on what they lost. The award replaces any retirement benefits that the claimant would have accrued but for their disability. The award simply replaces what he and his family lost.

In fact, when analyzed, the awards being made by are modest, are consistent with the law as embodied in the statute that created it in 2001, and, most importantly, reflect injury severity and the losses suffered by the injured 9/11 responder or survivors.