

PENNSYLVANIA NATIONAL GUARD INSURANCE

General Assembly of the Commonwealth of Pennsylvania
JOINT STATE GOVERNMENT COMMISSION
Harrisburg, Pennsylvania
1965

The Joint State Government Commission was created by Act of 1937, July 1, P. L. 2460, as last amended 1959, December 8, P. L. 1740, as a continuing agency for the development of facts and recommendations on all phases of government for the use of the General Assembly.

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LETTER OF TRANSMITTAL

*To the Members of the General Assembly of the
Commonwealth of Pennsylvania:*

Pursuant to House Resolution No. 87 and Senate Resolution No. 69, Session of 1963, and in cognizance of the personal and family risks incurred by Pennsylvania National Guardsmen during training and in military or civil emergencies, the Executive Committee of the Joint State Government Commission appointed the Task Force on Pennsylvania National Guard Insurance and directed that a study be made relating to insurance coverage for Pennsylvania National Guardsmen.

At the invitation of the task force, Major General Thomas R. White, Adjutant General of the Commonwealth, and members of his staff described certain insurance problems encountered by guardsmen under present legislation. A study was then made of coverages and restrictions affecting guardsmen under existing insurance and benefit programs.

In accordance with a directive of the Executive Committee, I transmit herewith a report of this study, entitled *Pennsylvania National Guard Insurance*.

BAKER ROYER, *Chairman*

*Joint State Government Commission
Capitol Building
Harrisburg, Pennsylvania
May, 1965*

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RECOMMENDATIONS

The Joint State Government Commission recommends that:

1. Money be immediately appropriated to pay the workmen's compensation insurance premium for the compensation provided for by Section 844 of The Military Code of 1949, as amended.
2. Workmen's compensation coverage be extended to include Pennsylvania National Guardsmen while engaged in volunteer civil emergency service, and immediate appropriations be made to pay for same.
3. The law providing for group life insurance for state employes be amended to extend its benefits to all Pennsylvania National Guardsmen.
4. The State Employes' Retirement Code of 1959 be amended to provide for either full or partial coverage for National Guard technicians, with or without credit for prior technician service, depending on availability of state funds.

INTRODUCTION

At the end of 1964, there were 20,938 Pennsylvania National Guardsmen, of whom 17,410 were members of the Pennsylvania Army National Guard and 3,528 were members of the Pennsylvania Air National Guard.

Of these 20,938 guardsmen, 1,632 were employed as full-time "technicians"¹ paid from federal funds and 43 were employed on a full-time basis by the Pennsylvania Department of Military Affairs and paid from Commonwealth funds.

As a rule, all guardsmen annually participate in a fifteen-day summer encampment as well as in evening and weekend training activities. They may be called into active service by the President or the Governor. While engaged in training activities or in active service at the call of the President, guardsmen are paid from federal funds. When called into active service by the Governor, they are paid from Commonwealth funds.

Guardsmen at times participate in volunteer service during community emergencies, such as floods, hurricanes, fires, civil disorders, and mine disasters.

A guardsman's coverage status under existing insurance programs depends upon the activity in which he is engaged. A guardsman's unpaid volunteer service does not entitle him to coverage under any of the programs outlined on the following pages.

¹Pursuant to Section 709 of Title 32 of the U. S. Code.

THE PENNSYLVANIA WORKMEN'S COMPENSATION ACT AND THE MILITARY CODE OF 1949

The Pennsylvania Workmen's Compensation Act defines the Commonwealth to be an employer for the purposes of the act. Hence, guardsmen engaged in Commonwealth-paid employment by the Pennsylvania Department of Military Affairs are covered.

In case of job-connected injury or death, the act provides for medical and surgical services within certain limitations, partial disability benefits, total disability benefits, and death benefits.

Partial disability benefits include two-thirds of the wage loss for 350 weeks, with a maximum benefit of \$37.50 in any week. However, in case of certain permanent injuries, benefits equal two-thirds of wages for 15 to 215 weeks plus \$20.00 to \$47.50 per week during a healing period of 6 to 25 weeks, regardless of earnings loss.

Total disability benefits equal two-thirds of wages for the duration of total disability, except that the minimum benefit is \$20.00 per week and the maximum is \$47.50.

Death benefits in case there is a widow range from 51 percent to two-thirds of wages (with a minimum of \$30.50 and a maximum of \$47.50 per week), depending on the number of children, for 350 weeks, and a continuation of children's benefits until age eighteen. If the survivors include neither widow nor children, certain dependent relatives may be eligible for benefits. Death benefit coverage is equivalent to life insurance ranging in value from about \$15,000.00 in case the deceased guardsman is survived by a widow aged twenty-three (the average age of guardsmen) to about \$30,000.00 if in addition he is survived by two children of an average age of two.²

The Military Code of 1949, as amended, provides that:

"If any officer or enlisted man of the Pennsylvania National Guard is wounded or otherwise disabled, or dies as a result

² Present value of benefits at time of death assuming an interest rate of 4 percent.

of wounds or other disability received or contracted while performing duty in active service of the State or in the performance of other military duty under competent order or authority, he or his dependents, if not compensated therefor by the government of the United States, shall receive from the Commonwealth just and reasonable relief, the amount of compensation to be determined in accordance with the Workmen's Compensation Law of Pennsylvania."³

Such compensation has not been paid since May 31, 1961, due in part to a controversy regarding whether or not the Workmen's Insurance Fund is obligated to pay claims in the absence of receipt of premiums.⁴ It is recommended that money be appropriated immediately to pay the workmen's compensation insurance premium for the compensation provided for by Section 844 of The Military Code of 1949, as amended.

It is further recommended that state workmen's compensation coverage be extended to guardsmen engaged in community emergency volunteer work when authorized or directed to act by a senior officer, warrant officer, or noncommissioned officer of the National Guard locally available. Appropriations should be immediately made to purchase such workmen's compensation coverage.

³ 1949, May 27, P. L. 1903, §844, as amended 1961, August 8, P. L. 981, §1.

⁴ The State Workmen's Insurance Fund has taken the position that in the absence of receipt of premiums for the coverage of National Guardsmen it is not liable for the payment of compensation. However, on December 10, 1964, Common Pleas Court No. 2 of Philadelphia County dismissed an appeal of the fund from an October 29, 1964, opinion of the Workmen's Compensation Board which (1) affirmed a referee's finding that the fund was the insurance carrier for the Commonwealth at the time the claimant was injured while on active duty with the Pennsylvania National Guard on July 18, 1961, and (2) affirmed the referee's order for the fund to pay medical expenses to the claimant. On January 14, 1965, the board, in an amendment to its opinion of October 29, 1964, overruled the referee's finding that the fund was the insurer, and ordered the Commonwealth to pay the medical expenses of the claimant. The Attorney General of the Commonwealth subsequently advised the Department of Military Affairs that this claim should be paid from its general appropriation.

Since the board's amended opinion of January 14, 1965, a workmen's compensation case has arisen involving the Pennsylvania National Guard Combat Support Co., 2nd Battle Group, 111th Infantry, 28th Infantry Division, as defendant, in which a guardsman injured while returning home from a two-week training tour has been found entitled to compensation of \$1,262.15; the referee found as one of his conclusions of law that the defendant National Guard unit was bound by the provisions of The Pennsylvania Workmen's Compensation Act.

THE FEDERAL EMPLOYEES' COMPENSATION ACT

With regard to federally paid technicians, National Guard regulations state that:

“A technician is entitled to medical, hospital, and loss of pay benefits if injured on the job or for illness which may be attributed directly to job performance. Benefits will be paid to eligible survivors in the event of death as a result of a job connected injury or illness. Such benefits and compensation are covered by the Federal Employees' Compensation Act.”⁵

The Federal Employees' Compensation Act⁶ is similar in structure to The Pennsylvania Workmen's Compensation Act. However, the benefits payable under the federal act are generally somewhat higher than those payable under the Pennsylvania act.

FEDERAL SOCIAL SECURITY OLD AGE AND SURVIVORS' INSURANCE

“Covered employment” under the federal Social Security Old Age and Survivors' Insurance program includes a guardsman's summer training and active federal service at the call of the President, and may or may not include his regular full-time activity. (Coverage is mandatory in the case of Commonwealth-paid employment in the Pennsylvania Department of Military Affairs, except for employes hired prior to 1957, for whom coverage is optional; coverage is also mandatory in the case of technician activity.)

The federal Social Security Old Age and Survivors' Insurance program provides for benefits to an eligible covered worker and to his eligible dependents in case of the worker's disability or old age, and also provides for survivorship benefits in case of the worker's death.

⁵ NGR 51 and ANGR 40-01, Chapter 7, Section 1, Paragraph 7-1.

⁶ 63 Stat. 865 *et seq.*, 5 USC 751 *et seq.*

Disability and death benefits under the program do not depend upon whether the disability or death is attributable to covered employment. Rather, eligibility for such benefits depends on the amount of covered employment.

Eligibility for disability benefits requires five years of Social Security-covered employment and a disability which has lasted six months and is expected to be of long or indefinite duration and which prevents any substantial gainful activity. Monthly benefits depend on average covered earnings and range from \$40.00 to \$127.00, plus dependents' benefits of \$20.00 to \$127.00.

In case of death: If the survivors include one or more dependent children under eighteen, eligibility for benefits requires that the insured at time of death be fully or currently insured, which involves at least six calendar quarters of covered employment. Monthly benefits range from \$40.00 to \$254.00, depending on the average covered wage and the size and composition of the surviving family. If there are no children under eighteen, eligibility for a widow's benefit requires that the insured be fully insured at time of death; the benefit begins at age sixty-two and amounts to \$40.00 to \$105.00 per month. Dependent parents of a deceased, fully insured individual are also entitled to benefits beginning at age sixty-two. Survivor benefits, together with a lump-sum death benefit of \$120.00 to \$255.00, are equivalent in value to life insurance in the amount of about \$1,000.00 to \$3,000.00 (depending on average covered earnings) in the case of an eligible widow aged twenty-three, and about \$9,000.00 to \$38,000.00 (depending on average covered earnings) in the case of an eligible widow aged twenty-three with two eligible children of an average age of two.

FEDERAL MILITARY AND VETERANS' LEGISLATION

Guardsmen engaged in training activities or in active federal service at the call of the President are covered by federal military and veterans' benefit programs.⁷

Injury benefits under these programs are in some instances limited to medical services and continuation of military pay while hospitalized.

⁷ 32 USC 321; 37 USC 204 and 272(c); and 38 USC 331-335 and 411-415.

Eligibility for temporary disability retirement requires disability of 30 percent or more or service of twenty years or more, and the disability must be such that it "may be of a permanent nature." The benefit is equal to base pay multiplied by the percentage of disability (or more in case of long service) and is payable for up to five years.

A permanent disability pension includes monthly compensation of \$16.00 to \$200.00 for 10 percent to 100 percent disability, respectively, and dependents' monthly compensation of about \$9.00 for a wife and \$5.00 for each child in case of 50 percent disability up to about \$18.00 for a wife and \$10.00 for each child in case of 100 percent disability.

Death benefits include a lump-sum payment of \$800.00 to \$3,000.00 (about \$2,200.00 in the case of the average enlisted guardsman) and the following monthly benefits to a surviving widow:

a. \$120.00 plus 12 percent of base pay (in the case of the average enlisted guardsman, this would total about \$163.00);

b. a benefit equivalent to Social Security Old Age and Survivors' Insurance benefits (children's and/or widow's benefits) if eligibility for Social Security benefits is lacking due to the deceased guardsman's not having been fully and currently insured; and

c. \$28.00 per child in excess of one under age eighteen, up to an amount that, when combined with Social Security benefits (or the equivalent), does not exceed \$128.00.

The death benefits under federal military and veterans' programs, combined with Social Security survivorship benefits, are equivalent in value to life insurance in the amount of about \$43,000.00 to \$45,000.00 in the case of a widow aged twenty-three, and about \$55,000.00 to \$81,000.00 in the case of a widow aged twenty-three with two children of an average age of two.

NATIONAL GUARD ASSOCIATION INSURANCE

A guardsman who is serving as a technician may, at his option, purchase group life insurance and/or disability insurance under a program sponsored by the National Guard Association of the United States.

The disability insurance provides benefits of up to 75 percent of the first \$7,000.00 of the insured's salary as a technician and up to 50 percent of the remainder, reduced by occupational disability benefits under any federal or state legislation and by the primary OASI benefit, if any; provided that the insurance proceeds, plus the other benefits, plus current earnings do not exceed his salary as a technician. The premium is 0.55 percent of salary for technicians under age forty and 0.80 percent for ages forty to sixty.

The life insurance is in the amount of \$10,000.00 with no exclusions, with double indemnity for accidental death. The premium is \$48.10 per year, regardless of age.

STATE EMPLOYES' GROUP LIFE INSURANCE

The Act of September 26, 1961, P. L. 1661, provides for the procurement of a group life insurance policy (or policies) by the Department of Property and Supplies and for optional purchase of life insurance under such policy by "full-time permanent employes of the Executive, Legislative, and Judicial Branch of the Commonwealth of Pennsylvania, its commissions, boards, departments and authorities." The maximum amount of such insurance for any insured employe ranges from \$2,500.00 to \$10,000.00, depending on yearly gross compensation. It is noted *with surprise* that the state employe group life insurance program is not as yet in effect. It is recommended that the Department of Property and Supplies take steps to implement the Act of 1961.

Guardsmen who are full-time permanent employes of the Pennsylvania Department of Military Affairs are eligible to purchase group life insurance under this act. It is recommended that the act be amended to extend its benefits to all Pennsylvania National Guardsmen.

STATE EMPLOYES' RETIREMENT SYSTEM COVERAGE

Commonwealth-paid employes of the Department of Military Affairs are covered by the State Employes' Retirement Code. In addition to providing for retirement or withdrawal allowances after attaining age

sixty or twenty-five years of service and involuntary withdrawal allowances after ten years of service, the code provides for disability allowances after five years of service and employer-employer-financed death benefits after ten years of service.

In 1961, the code was amended to extend coverage to Pennsylvania National Guard technicians,

“ . . . provided the United States Government shall agree to contribute to the fund, from time to time, the moneys required to build up the reserves necessary for the payment of the State annuities of such employes without any liability on the part of the Commonwealth to make appropriations for such purposes.”⁸

Section 709(f) of Title 32, United States Code, authorizes United States Government contributions to retirement systems in an amount not to exceed 6½ percent of technician compensation. Federal regulations require that employer Social Security contributions be deducted from this 6½ percent.⁹ The remainder is insufficient to pay the employer cost of State Employees' Retirement System coverage; hence, Pennsylvania National Guard technicians are not covered and are losing potential federal contributions of approximately \$480,000.00 annually.

It is recommended that the State Employees' Retirement Code be amended to obtain for the technicians the advantage of the available federal contributions without cost to the Commonwealth, or, alternatively, that the code be amended to provide for full Class A coverage with the Commonwealth paying the balance of the employer contributions, with or without credit for prior technician service.

⁸ 1961, August 4, P. L. 925.

⁹ National Guard Regulation NGR 51 and Air National Guard Regulation ANGR 40-01, paragraph 3-38.

