

1980 WL 120633 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 28, 1980

\*1 Edgar A. Vaughn, Jr., CPA  
State Auditor  
P. O. Box 11333  
Columbia, South Carolina 29211

Dear Mr. Vaughn:

You have recently asked for a clarification of [Section 42-11-30, Code of Laws of South Carolina, 1976](#), which provides that any impairment or injury to the health of a 'fire fighter' caused by heart of respiratory disease resulting in total or partial disability or death, shall be presumed to have arisen out of and in the course of employment. Your specific request concerns whether an employee of a municipal fire department who is not involved in actively fighting fires is entitled to the benefit of this presumption.

While the Workmen's Compensation Act does not define 'fire fighter', it is obvious that the purpose of this presumption is to protect those individuals who are exposed to gases, smoke, fumes, etc., which one encounters in fighting fires. This question has arisen in other jurisdictions with different results.

Pennsylvania has answered the question in the negative in the case of a dispatcher, on the ground that a dispatcher's work does not expose him to the kind of special hazard contemplated by the state. [Andes v. City of Lancaster, 350 A.2d 457, 1976](#). On the other hand, California faced the same problem with a maintenance employee who was, however, required to attend fires, and held that the presumption could not be summarily ruled out. [Buescher v. Workmen's Compensation Appeals Board, Cum. 71 Cal. Rpts. 405, 1968](#).

While the question that you raise has not been addressed by South Carolina courts, it would appear that whether an individual is entitled to benefits of the presumption contained in [Section 42-11-30, Code of Laws of South Carolina, 1976](#), would depend on the facts in each case. If the individual in question were a clerical or sedentary worker who was never exposed to the hazards involved in fire fighting, the presumption would not apply. On the other hand, if the individual were a maintenance employee who, from time to time, did attend and fight fires, then he might be entitled to the presumption.

It should be noted that whether an individual is entitled to the presumption is not determinative of the primary issue, i.e. whether an injury is compensable under the Workmen's Compensation Act. Rather, the presumption simply shifts the burden of proof to the employer/carrier, and may be overcome by competent evidence to the contrary. Similarly, the fact that an individual is not entitled to the presumption does not automatically preclude him from recovering under the Act. Rather, it places the burden on him to establish that the impairment or injury arose out of and in the course of his employment.

If you have any questions, please do not hesitate to contact me.

Sincerely,

James W. Johnson, Jr.  
Assistant Attorney General

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