

RULE A9

Qualifying injury

Rule A9 defines “qualifying injury”.

This Rule was removed from the FPS with effect from 1 April 2006 when the Firefighters' Compensation Scheme was introduced.

The explanation of Rule A9 as it applied up to 31 March 2006 appears on the following pages as "archived" material.

Rule A9 defines “qualifying injury”.

Definition for regular firefighters Rule A9(1) defines a qualifying injury, in the case of a regular firefighter, as an injury received by a person without his or her own default in the execution of his or her duties as a regular firefighter.

Definition for retained firefighters Rule A9(2) defines a qualifying injury, in the case of a retained or volunteer firefighter, as an injury received by a person without his or her own default in the exercise of his or her duties as a retained or volunteer firefighter.

Default Rule A9(3) explains that an injury will be treated as having been received without your own default unless the injury is wholly or mainly due to your own serious and culpable negligence or misconduct. There would have to be very exceptional circumstances for any injury award to be refused on grounds of your default.

Useful reference source

- Bradley v. LFCDA [1994] and Fiske v. Norfolk CC [1998]: interpretation of “qualifying injury” – cumulative effect
- Bradley v. LFCDA [1994]: interpretation of “in the execution of duties” – does not include travelling to work
- Dunford v. Somerset CC [1994]: interpretation of “in the execution of duties” – does not include playing rugby for the brigade
- FSC 5/2000: effect of Bradley and Fiske on interpretation
- Regina v. Mallett, ex parte Stunt [Court of Appeal, 23.2.2001]: interpretation of “in the execution of duties” in internal investigation
- Clinch v Dorset Police Authority [2003]: failure to receive promotion is not an “injury received in the execution of duties”
- FSC 30/2004: introduction of pension provisions for part-time regular firefighters

Points To Note

1. If you are seconded to an outside body but continue to be paid by your fire and rescue authority, your duties will be regarded as those of a regular firefighter during the secondment period for the purposes of an injury award.
2. Before 13 September 2004, Rule A9(2) referred to a "part-time" member of a brigade. The expression "retained or volunteer" was substituted with effect from 13 September 2004 to reflect amendments made to the FPS to provide benefits for part-time regular firefighters.

Rule A9 (continued)

Points To Note continued

3. The expressions “execution of duties” (regular firefighters) and “exercise of duties” (retained and volunteer firefighters) are not further defined in the FPS. If you are injured while attending a fire or after being called out for any other type of incident this will be covered, as would an injury received during a recognised fitness training programme during duty hours. However, in the case of *Dunford v. Somerset CC* [1994] an injury at a sporting event (not part of a recognised fitness training programme) was determined as not being an injury received in the execution of duties. Also, in *Bradley v LFCDA* [1994], reference was made to an earlier appeal to Crown Court in respect of an injury while driving to work – “not surprisingly the Crown Court held that he was not in execution of his duties when he was driving to work on the day in question”.
4. *Bradley v. London Fire and Civil Defence Authority* [1994] also gave an interpretation of “qualifying injury”. It established that the cause of the claimant’s disablement did not have to be attributable to identifiable and distinct incidents on duty; that it was sufficient to show that there was a causal connection between the performance of the claimant’s duties as a regular firefighter and the receipt of the injury (or disease, including a psychiatric illness) when determining whether that injury (or disease) caused or substantially contributed to the claimant’s disability. Similarly, in *Fiske v. Norfolk County Council* [1998], the Crown Court ruled that aggravation of the claimant’s pre-existing medical condition, by a succession of traumas over the years of employment, could be recognised as an injury (or disease) when determining whether that injury (or disease) caused or substantially contributed to the claimant’s infirmity. See also the explanation of Rule A11, “Points To Note”, Point 2
5. It is necessary to establish whether there has been a qualifying injury for the following benefits:
 - an ill-health pension if you have less than two years’ service (Rule B3(2)(a))
 - an injury award (Rule B4(1))
 - a spouse’s or civil partner’s special or augmented award (Rule C2(1) and Rule C3(1))
 - a child’s special allowance (Rule D2(1)) and a child’s special gratuity (Rule D3(1))
 - an adult dependent relative’s special pension (Rule E2(1)).
6. *Regina v. Mallett, ex parte Stunt* [2001], gave an interpretation of “in the execution of duties” for an injury award under the Police Pensions Regulations. It was determined that a police officer who retired as a result of a permanently disabling psychiatric injury suffered in reaction to an internal police investigation did not suffer the injury in the execution of his duties as a constable and he was not, therefore, eligible for an injury pension.
7. In *Clinch v Dorset Police Authority*, Mr Justice McCombe considered the case of a police officer who claimed failure to gain promotion was a “qualifying injury”. He stated “For my part I am unable to see that, in the present case, an event or events, condition or circumstances impacted directly upon the mental condition of the Claimant while carrying out his duties which contributed to mental disablement. It seems to me that the relevant events impacted on his condition while not carrying out his duties but when, having sought to obtain other duties, he was disappointed in not being given them. The injury derived simply “from being a police officer” and wanting promotion that he failed to attain. On any ordinary meaning of the regulations that does not, in my view, amount to an injury received in the execution of duty.”