



STRUNK • DODGE • AIKEN • ZOVAS
ATTORNEYS AT LAW

LUCAS D. STRUNK[◇]
JASON M. DODGE[◇]
RICHARD L. AIKEN, JR.^{◇*}
ANNE KELLY ZOVAS
NANCY E. BERDON
CHRISTOPHER BUCCINI
KATHERINE E. DUDACK^{*}
PHILIP T. MARKUSZKA^{*}
CHRISTOPHER J. D'ANGELO^{*}

** Also Admitted in MA ◇ Board Certified Workers' Compensation Specialist*

200 CORPORATE PLACE
SUITE 100
ROCKY HILL, CT 06067

P: 860.785.4500

F: 860.436.9630

WWW.CTWORKCOMP.COM

**HEART AND HYPERTENSION CLAIMS
UNDER CONNECTICUT GENERAL STATUTES SECTION 7-433c**

Presented by

**Strunk Dodge Aiken Zovas
200 Corporate Place, Suite 100
Rocky Hill, CT 06067
Main Phone: 860-785-4500
Fax: (860) 436-9630**

I. SECTION 7-433c IS NOT A WORKERS' COMPENSATION BENEFIT.

- A. Section 7-433c is a "**bonus**" for certain policemen or firemen.
- B. It is administered under the Connecticut Workers' Compensation Act but it is not a workers' compensation benefit.
- C. It is taxable!

Practice tip: If you are negotiating a global settlement and part of the claim is under Section 7-433c and Chapter 568, you may want to allocate more money to the compensation claims to lower the claimant's taxable exposure and provide incentive to the claimant to settle.

- D. Since Section 7-433c claims are not a workers' compensation claim, we do not issue voluntary agreements for this type of claim; generally, Findings and Awards are issued as opposed to voluntary agreements for 7-433c claims.

II. EMPLOYEES ENTITLED TO MAKE A CLAIM UNDER SECTION 7-433c

- A. Uniformed members of paid municipal fire departments.
- B. Or regular member of paid municipal police department.
- C. Must be hired before July 1, 1996.

- D. Must have passed physical examination at time of hire without evidence of hypertension or heart disease.

Evidence of heart disease or hypertension at pre-employment examination is at bar to claim in its entirety. If you have evidence of heart disease on pre-employment physical examination then you cannot subsequently make a claim for hypertension and vice versa. *Suprenant v. New Britain*, 28 Conn. App. 754 (1992).

- E. Constables or appointed supernumerary police are not covered. *Genesky v. Town of East Lime*, 275 Conn. 246 (2005).

III. **WORKERS' COMPENSATION INSURANCE POLICIES DO NOT COVER SECTION 7-433C CLAIMS**

There can be an insurance policy for Section 7-433c claims but this requires a different contract and additional premium (this is rarely issued). *Town of Plainville v. Travelers*, 178 Conn. 664 (1979).

IV. **CLAIMANTS IN SECTION 7-433C CLAIMS DO NOT HAVE TO PROVE CAUSATION SO LONG AS JURISDICTIONAL REQUIREMENTS ARE MET**

- A. Issues of causal relationship of injury to work not relevant.
- B. Lifestyle, genetics or predisposition to injury not relevant.
- C. We cannot rebut causation regarding Section 7-433c claims.

V. **REBUTTABLE PRESUMPTIONS**

Section 7-433c essentially establishes a conclusive presumption that a claim is due to work; we have no opportunity to rebut this (that is, defend the claim on causation issues). Other statutes, however, create **rebuttable presumptions**; they establish a claim as compensable but we can present defenses to the claim on causation issues.

A. **Section 31-294i**

Firemen, police or constables who began employment after July 1, 1996 get benefits for cardiac emergency while engaged in training, fire duty or public safety operation. Cardiac emergency means cardiac arrest or myocardial infarction. Municipalities can present evidence to **rebut** this presumption.

Likely these types of claims would be considered compensable and not taxed.

B. **Section 7-314a**

Volunteer firefighters or voluntary ambulance personnel who suffer a condition caused by hypertension or heart disease while in training or fire duties are presumed to have compensable injuries in the line of duty, however, this presumption **can be rebutted**.

VI. CREDIT/SETOFFS FOR SECTION 7-433C CLAIMS

- A. Based on the "cap" created by Section 7-433b(b) payments received cannot exceed 100 percent of the weekly compensation being paid to someone presently in the same rank as the claimant.
- B. "Cap" includes overtime earnings and not just base salary.
- C. For any claims where claimant is on pension the "cap" should be considered.

Example: Salary and overtime earnings equals \$1,500.00 per week. The pension being paid is \$700.00 per week. Cap is determined by deducting \$700.00-per-week pension payment from \$1,500.00 wages equating to de \$800.00-cap payment. Claimant cannot be paid any more than \$800.00 per week under Section 7-433c based on this "cap" analysis.

VII. DEFENSE BASED ON UNTIMELY NOTICE

- A. There is a 1-year statute of non-claim for Section 7-433c cases
- B. Section 7-433c is not considered an occupational disease and therefore the 3-year statute of non-claim does not apply. *Zaleta v. Town of Fairfield*, 38 Conn. App. 1 (1995)
- C. Time to file a claim starts when:
 - 1. Claimant is informed by medical professional of diagnosis of heart disease or hypertension.
 - 2. Footnote 18 of *Ciarlelli v. Town of Hamden*, 299 Conn. 265 (2010), states that time to file a claim may begin when medication for hypertension or heart disease is prescribed to the patient (even if no mention to patient that he/she has hypertension or heart disease)

VIII. IN ORDER TO BE ENTITLED TO BENEFITS THE CLAIMANT MUST SUFFER DEATH OR DISABILITY WHILE AN EMPLOYEE

In *Staurovsky v. City of Milford*, 164 Conn. App. 182 (2016), a heart attack occurring 1 week post retirement not a valid claim notwithstanding argument that he had coronary artery disease during his work.

But, claimants will allege that an injury that occurs post-retirement that is substantially related to a prior compensable heart or hypertension claim under Section 7-433c is compensable. This issue is to be addressed in cases before the Appellate and Supreme Court in the near future.

IX. CAUSATION ISSUES AND THE HOLDING IN *HOLSTON V. CITY OF NEW HAVEN POLICE DEPARTMENT*, 323 CONN. 607 (2016)

Claimant had hypertension claim that was not timely filed and was dismissed. He had a subsequent heart attack during work that was substantially related to the prior untimely filed hypertension claim. The court allowed the claim to be pursued holding that the heart condition was a **separate injury**. The court concluded causation issues in Section 7-433c claims was not relevant.

X. PAYMENT OF MEDICAL EXPENSES

Towns can require that medical expenses for Section 7-433c claims be paid through available group coverage. *Rinaldi v. Town of Enfield*, 82 Conn. App. 505 (2004).

XI. IN EVALUATING THE CASE YOU SHOULD DETERMINE IF THE CLAIMANT HAS A VALID DIAGNOSIS OF HEART DISEASE OR HYPERTENSION THAT IS COVERED BY SECTION 7-433c

A. *Brooks v. Town of West Hartford*, 4907 CRB-6-05-1 (January 24, 2000)

Claim for death for myocardial sarcoidosis did not fall under Section 7-433c because the condition was systemic and not actually heart disease. Claim for benefits dismissed.

B. *Mangione v West Hartford*, 6268 CRB-6-18-4 (April 12, 2019)

But in this recent case the CRB found compensable a claim for mitral and aortic valve disorder under Section 7-433c, reversing a commissioner decision that the injury did not constitute heart disease because it was due to bacteria that invaded the heart. The claimant's hypertension claim was dismissed as not timely filed but the CRB concluded that did not bar the heart claim from being pursued.

C. *Korn v. Town of Guilford*, 6178 CRB-3-17-3 (March 21, 2018)

Exercise-induced hypertension after stress test was determined not be hypertension under Section 7-433c. Claim for benefits denied.

XII. ALTERNATIVE CLAIMS UNDER SECTION 7-433C OR CHAPTER 568

A claimant may pursue a claim under either Section 7-433c or Chapter 568; an employer cannot force employee to pursue one or the other claim. *Bakelaar v. City of West Haven*, 193 Conn. 59 (1984).

Once choice is made by the claimant regarding pursuit to Section 7-433c or Chapter 568 claim then the claimant cannot then proceed under the other statute. *Hyatt v. City of Milford*, 57 Conn. App. 472 (2000).

XIII. PENDING CASES BEFORE CONNECTICUT SUPREME AND APPELLATE COURT ADDRESSING SECTION 7-433C CLAIMS

Dickerson v. City of Stamford, SC 20244

In this case the CRB reversed a finding of the trial commissioner which had dismissed a claim for a heart attack since no claim for benefits was filed within one year of the heart attack. The CRB determined, however, that the myocardial infarction was due to an underlying accepted hypertension injury that had been accepted under Section 7-433c while the claimant was employed as a police officer. Notwithstanding that the heart attack occurred after the claimant's retirement the Board held that he could pursue the claim. The CRB refused to agree with the respondent's contention that the case of *Holston v. New Haven Police Dept.*, 323 Conn. 607 (2016), should apply to the claim (in *Holston* the Supreme Court had allowed a heart attack claim to be pursued under Section 7-433c despite the fact it was substantially related to an underlying, untimely filed hypertension claim). The Supreme Court has agreed to hear the appeal. This case will be the first opportunity that the Supreme Court has had to determine the implications of their decision in *Holston v. New Haven*, supra, a case litigated by Attorney Dodge of SDAZ.

This case is in the Supreme Court; no briefs filed yet.

Brocuglio v. Thompsonville Fire District #2, 6165 CRB-1-16-12 (December 21, 2017)

The CRB affirmed a finding that the claimant/firefighter was entitled to benefits under Section 7-433c for mitral valve injury to the heart. Section 7-433c claims for heart and hypertension for fireman/police are a "bonus" to these civil servants and not workers' compensation benefits although they are administered under the workers' compensation statutes. The respondents argued that an earlier untimely-filed claim for pericarditis barred the claimant from pursuing the later-diagnosed injury to the mitral valve. The Board concluded that the mitral valve injury was separate from the pericarditis claim and ordered that benefits be paid. The Board cited the recent Supreme Court case of *Holston v. New Haven Police Department*, 323 Conn. 607 (2016), in support of their decision.

This case is in the Appellate Court, AC 41237. It was argued before Appellate Court March 6, 2019 and we are awaiting a decision.

McGinty v. Stamford Police Department, 6197 CRB-4-17-6 (July 17, 2018)
Appellate Court

The respondents contended that the claimant did not have heart disease but rather had systemic issues caused by peripheral artery disease and that should not be compensable under 7-433c. The commissioner and CRB disagreed and awarded benefits for hypertension/heart disease.

The case is now on appeal to the Appellate Court, AC 41943. Briefs have been filed but no argument yet.

Coughlin v City of Stamford Fire Department, 6218 CRB-5- 17-9 (February 15, 2019)

The firefighter in this case had a compensable hypertension claim under Section 7- 433c. He retired and later developed coronary artery disease (CAD) that was substantially related to the hypertension. The commissioner dismissed the case due to the fact that the CAD was not manifest until after retirement. The Board reversed stating that since there was a causal relationship between the accepted hypertension condition and CAD the claimant was entitled to coverage for CAD; this decision is arguably inconsistent with the Supreme Court's ruling in *Holston v. New Haven*, 323 Conn. 607 (2016), which found that causation issues do not apply in 7-433c cases. It is likely this case will be appealed to the Supreme Court and be heard with the Dickerson case discussed above.

This case is in the Appellate Court, AC 42668. No briefs filed yet.

Vitti v. City Of Milford, 6246 CRB-4-18-2 (January 17, 2019)

In this Section 7-433c heart claim the police officer had to undergo a heart transplant. After the surgery he recovered and did fairly well and was given 23% rating for the heart. The claimant sought a 100% rating on the theory that his entire heart had to be replaced. Both the commissioner and the Board concluded that the claimant was entitled to the amount of impairment that existed at the time of maximum improvement (23%) and not a 100% rating

This case is in the Appellate Court, AC 42543. No briefs filed yet.

Martinoli v. City of Stamford, 6271 CRB-7-18-5 (April 24, 2019).

The CRB affirmed a finding of compensability of atrial fibrillation that became symptomatic **sixteen years** after the police officer's retirement. The Board found the condition was compensable under Section 7-433c because it was substantially related to a prior accepted claim under 7-433c for coronary artery disease and hypertension that was accepted while the officer was employed. The Board again distinguished the case of *Holston v. New Haven Police Department*, 323 Conn. 607 (2016), in support of their decision.

This decision was just issued but undoubtedly will be appealed to the Appellate Court.

Strunk Dodge Aiken Zovas
200 Corporate Place, Suite 100
Rocky Hill, CT 06067
Main Phone: 860-785-4500
Fax: (860) 436-9630



STRUNK • DODGE • AIKEN • ZOVAS
ATTORNEYS AT LAW