

Define when Volunteer Fire Fighters are “On Duty”:

The New Jersey workers’ compensation law has proven to be troublesome when applied to passive or “life” volunteers. In its 2003 decision in *Capano v. Bound Brook*, the New Jersey Supreme Court ruled that the law even extends to a 93 year-old member who slipped while putting a log into a wood burning stove in the fire house. The court held that under the current law, Capano was in the “line of duty”, but asked the legislature to reexamine this question. To date, the legislature has not taken up this issue.

As a result of the Capano decision, the current workers’ compensation law often requires New Jersey taxpayers to cover medical bills that would otherwise be paid by Medicare. For example, if a “life” member has a momentary fainting spell while directing traffic at a fire, falls and is seriously injured, the law presumes this to be job related and the municipality must pay the medical bills through workers’ compensation. This creates an unfortunate dilemma. Certainly, every effort should be made to allow senior members to participate in organizations they have served for decades so long as they don’t risk the safety of themselves or other firefighters. But under the current law, allowing senior members to have a role in the department creates a substantial risk to the municipality. This is the unintended consequence of using the workers’ compensation system to pay costs that are normally covered through other mechanisms.

Therefore, the MEL agrees with the New Jersey Supreme Court that the legislature should take up this issue.