

The Mechanics of Firefighter Cancer Presumption in New Hampshire

What is a “Presumption”?

Presumptions have generated a fair amount of confusion, probably because they are relatively rare and deviate from the normal burdens of proof in a civil case. Ordinarily, the party bringing a claim carries the initial burden of persuasion. In other words, it is the claimant’s responsibility to establish that there is sufficient evidence to move the case forward - also referred to as establishing a “prima facie” case. The defense is then provided an opportunity to counter the claimant’s prima facie case in various ways. The claimant may then attempt to rehabilitate his/her evidence and counter any new material offered by the defense.

When the law creates a presumption for a particular type of claim, the claimant is excused from meeting the initial evidentiary burden as to all or part of the claim, effectively placing the initial burden on the defense to counter the presumed aspects of the claim.

The Supreme Court has provided detailed guidance on the application of the presumption in cases involving heart disease. See *City of Manchester Fire Department v Gelinas*, 139 N.N 36 (1994); *Cunningham v Manchester Fire Department*, 129 N.H. 232 (1987)