

Department of the Interior Departmental Manual

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Series: Legal

Part 451: Claims

Chapter 3: Loss or Damage – Employee’s Personal Property

Originating Office: Office of the Solicitor

This chapter has been given a new release number.* No text changes were made.

451 DM 3

3.1 Purpose. This chapter prescribes Departmental policies for the settlement of claims against the United States arising after August 31, 1964, for damage to or loss of personal property of employees of the Department of the Interior. The statutory authority for these regulations is contained in the “Military Personnel and Civilian Employees” Claims Act of 1964, 78 Stat. 767, 31 U.S.C. 240.

3.2 Scope. Under these regulations claims against the United States, arising after August 31, 1964, are settled for damage to or loss of personal property of employees of the Department of the Interior. The damage or loss must be incident to the employees’ service, and possession of the property must be reasonable, useful, or proper in the circumstances. The maximum amount allowable on a claim is \$15,000.

In determining whether or not the possession of the property in question is reasonable, useful or proper in the circumstances, the adjudicating authority will consider the claimant’s living conditions, his income, his social obligations, the size of his family, his need for the quantity of the property involved, as well as the circumstances attending the acquisition or possession of the property and the manner of the damage or loss.

The rules stated in 395 DM 4 (Required Reports of Accident Investigations), and in 451 DM 1 (Tort Claims Against the United States) are controlling in the investigation, processing and settlement of claims cognizable under the “Military Personnel and Civilian Employees’ Claim Act of 1964” insofar as those rules are not inconsistent with these regulations.

3.3 Claimants.

A. A Claim may be filed by any person who was an employee of the Department of the Interior at the time of the incident which resulted in the damage or loss, or by such a person authorized agent or legal representative. If the employee is dead, the claim may be filed by his (1) spouse, (2) children, (3) father or mother, or both, and (4) brothers or sisters, or both. Payments in settlement of claims to survivors will be made in the order in which the individuals

are listed above.

B. A claim may not be filed by or for the benefit of a subrogee, assignee, conditional vendor or other third party.

3.4 **Claims Cognizable.** Any meritorious claim within the scope of the Military Personnel and Civilian Employees' Claim Act of 1964, which is not specifically prohibited by these regulations may be allowed. The following are examples of allowable claims.

A. Losses in Quarters or Other Authorized Places. Damage to or loss of property caused by fire, flood, hurricane, or other serious occurrence, or by theft, while located at:

(1) Quarters, wherever situated, which were occupied by the claimant and were assigned to him (whether or not a charge was made for the quarters) or otherwise provided in kind by the Government.

(2) Quarters outside the 50 States and the District of Columbia which were occupied by the claimant but were neither assigned to him nor provided in kind by the Government, except when the claimant is an employee who was a local inhabitant at the time of the damage or loss.

(3) Any warehouse, office, or other place designated by proper authority for the reception or storage of the property.

B. Transportation Losses. Damage to or loss of property incident to transportation or storage pursuant to orders (e.g. change of station), in connection with travel under orders, or in performance of duty, including property in the custody of:

(1) A common carrier or any other commercial concern.

(2) An agent or agency of the Government.

(3) The claimant, including property in a private or public conveyance in which he is traveling.

C. Disaster Losses. Damage to or loss of property caused by a marine, rail, aircraft, or other common disaster, provided the claimant was on duty at the time and place of the damage or loss.

D. Public Service Losses. Damage to or loss of property used for the benefit of the Government at the direction of proper authority.

E. Losses Incident to Extraordinary Risks. Damage to or loss of property subjected to extraordinary risks incurred in the performance of duty, such as risks incident to enemy action, overseas hostilities, civil disturbance, public disorder, or disaster alleviation, or incurred in efforts to save human life or Government property.

F. Money Losses. Losses of money when:

(1) Accepted by Government personnel with apparent authority to accept it for such purposes as safekeeping, purchase of United States bonds or other authorized disposition.

(2) Caused by fire, flood, hurricane, or other serious occurrence, or by theft, while located at quarters as qualified in 3.4A(1) or 3.4A(2), or caused by marine, rail, aircraft, or other common disaster as qualified in 3.4C. In instances of theft from quarters it must be conclusively shown that reasonable precautions were used to safeguard the money.

3.5 Ownership and Possession of Property. Compensation may be allowed even though the property was not in the possession of the claimant at the time of the damage or loss, provided the claimant was the owner of the property. Compensation may also be allowed even though the claimant was not the owner of the property, provided it was lawfully in his possession, or lawfully under his dominion and control (e.g., borrowed from others), and the Government will not be required to pay the owner of such property.

3.6 Claims Not Cognizable.

A. In General. Any property for which the Government has paid to the employee a rental fee or other use fee (e.g., an automobile for which the Government pays a mileage allowance).

B. Contributory Negligence. Any property damaged or lost, in whole or in part, as a result of any negligence or wrongful act of the claimant, or any agent or employee of the claimant acting within the scope of the agency or employment.

C. At Quarters. Any property damaged or lost while located at quarters within one of the 50 States or the District of Columbia which were occupied by the claimant, but were neither assigned to him nor otherwise provided in kind by the Government.

D. Intangible Property. Any intangible property such as checks, promissory notes, stock certificates, bonds, bills of lading, warehouse receipts, baggage checks, insurance policies, money orders, travelers' checks, and bank books.

E. Government Property. Any Government property, except that for which the claimant is responsible to a Government agency other than the Department of the Interior.

F. Property for Business. Any property to be disposed of by sale or use in a private business enterprise.

G. Clothing. Any clothing or articles being worn, except when involved in a marine, rail, aircraft, or other common disaster, as qualified in 3.4C, or when subjected to extraordinary risks as qualified in 3.4E.

H. Motor Vehicles. Any motor vehicle or trailer, except when used for the benefit of

the Government as qualified in 3.4D, or when subjected to extraordinary risks as qualified in 3.4E.

I. Money. Any money or currency, except as provided in 3.4F.

J. Valuable Items. Small items of substantial value, such as expensive cameras, watches, jewelry, and furs, which, during shipment by ordinary means (e.g., with household goods, or hold baggage), are lost, damaged, or stolen.

K. Contractual Coverage. Any claim, or any portion of a claim, which is recovered or is recoverable pursuant to contract, express, or implied, including a policy of insurance. Recoverable here means actually recoverable and not that the claim or some part of it technically should be recoverable. (See paragraph 3.8.)

L. Mysterious Disappearance. Any property which has mysteriously disappeared. In any claim for missing property, there must be satisfactory evidence that the property was stolen or destroyed.

3.7 Filing of Claim.

A. Statute of Limitations. No claim may be paid under these regulations unless it is presented in writing within two years after it accrues. For the purposes of these regulations, a claim accrues at the time of the incident causing the loss or damage, or at such time as the loss or damage is or should have been discovered by the claimant in the exercise of due diligence.

If a claim accrues in time of war or in time of armed conflict in which any armed force of the United States is engaged or if such war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim may be presented not later than two years after that cause ceases to exist, or two years after the war or armed conflict is terminated, whichever is earlier.

B. Presentation. Claims should be submitted to the head of the bureau or agency (or his designated representative) which employs the claimant.

C. Form of Claim. The claim will ordinarily be submitted in triplicate on the form provided by the Department for this purpose (DI Form 570). However, any writing timely received by the proper bureau or agency head (or his designated representative) will be considered as a claim, if it constitutes a demand for compensation from the United States, sets forth the facts and circumstances in detail, and establishes that such a claim is within the scope of these regulations.

3.8 Recovery From Third Parties.

A. Recovery from Carrier, Insurer, or Other Third Party. Whenever compensation for property damage or lost incident to service has been recovered or is recoverable from a carrier, insurer or other third party, the amount otherwise allowable under these regulations will be reduced to the extent of the compensation so recovered, or recoverable, as hereinafter

provided. The rules and procedures set forth are provided for the benefit of the claimant in obtaining recovery from a carrier or insurer and thereby receiving the maximum amount of compensation for the loss or damage. Failure of the claimant to comply with the following rules and adhere to the required procedures may reduce or preclude payment under these regulations.

B. Demand on Carrier. When it appears that damage to or loss of property has occurred under circumstances in which a commercial carrier is responsible, the claimant will make timely and prompt demand in writing upon the last common carrier under the Government bill of lading or contract known or believed to have handled the shipment. If more than one bill of lading or contract was issued, a separate demand must be made on the last common carrier under each bill of lading or contract.

C. Demand on Insurer. When the property damaged or lost was insured in whole or in part, the claimant will, within the time prescribed in the insurance policy, and prior to or concurrently with presenting his claim against the Government, make a demand in writing on the insurer for reimbursement under the terms and conditions of the policy. The claimant must comply with all applicable provisions of the policy.

D. Demand on Other Third Party. When it appears that damage to or loss of property has occurred under circumstances in which any other third party or third parties may be responsible, the claimant will make a demand for payment in writing upon each and every third party who might reasonably be liable for the damage or loss.

E. Action Subsequent to Demand. Subsequent to or concurrent with making the demand or demands as required in 3.8B, 3.8C, and 3.8D, the claimant may present his claim against the Government. A copy of all demands and related correspondence in the possession of the claimant, his agent or employee, will be submitted with the claim. Any offer by a third party to the claimant to settle the matter for less than the amount of the demand will be submitted to the head of the bureau or agency (or his designated representative) which employs the claimant prior to the claimant's accepting the offer. The head of the bureau or agency (of his designated representative) will submit the offer as part of the administrative record to the adjudicating authority. Any acceptance by the claimant of partial payment from a third party in settlement of the claim without the approval of the adjudicating authority may preclude payment under the regulations.

F, Application of Recovery. When the amount recovered or recoverable (actually recoverable, not that which technically should be recoverable) from third parties is equal to or greater than the total loss, no compensation will be allowed under these regulations. When the amount recovered or recoverable is less than the total loss, the amount recovered or recoverable will be deducted from the amount otherwise allowable under these regulations, except:

(1) When the claim against the third party included a demand for compensation in excess of \$6,500, the amount recovered or recoverable will be applied first to that portion of the claim which is in excess of \$6,500.

(2) When the claim against the third party included a demand for compensation for items of property for which allowance is precluded by these regulations, the

amount recovered or recoverable from the third party will be applied to items or property for which allowance is precluded by these regulations before any deduction is made from the amount allowable under these regulations, unless it appears conclusively that the amount recovered or recoverable is not for these items.

G. Failure to Make Required Demand. When a demand on any third party is required and the claimant fails to make such demand timely, or fails to make reasonable efforts to recover from the third party, the amount allowable under these regulations will be reduced by the maximum amount which would have been recoverable. However, this reduction will not be applied in cases in which the claimant's duty precluded timely demand or diligent prosecution of recovery from the third party, or when such demand and prosecution was impracticable.

H. Transfer of Rights. The claimant will assign to the United States to the extent of any payment on his claim accepted by him, all his right, title and interest in any claim he may have against any third party, arising out of the incident on which the claim against the United States is based. He will also, upon request, furnish such evidence as may be required to enable the United States to enforce the claim. After payment of his claim by the United States, any payment by a third party will be applied as stated in paragraph 3.8F.

3.9 Settlement of Claims.

A. Responsibility. The responsibility for the investigation, processing and settlement of claims under the regulations is the same as that for tort claims as stated in 451 DM 1 insofar as what is stated there is not inconsistent with regulations.

B. Evidence. The evidence in support of the claim must be of the type and nature sufficient to support the claim by a preponderance of the evidence unless specifically stated otherwise in these regulations. All evidence in the administrative record will be considered, including that submitted by the claimant, and that revealed by the investigation conducted by the Government.

C. Determination of Compensation. When compensation is allowed, the amount of compensation allowable will be determined as follows:

(1) Lost or Destroyed Property. The allowable compensation for lost, stolen, or destroyed property will normally be, and in no event exceed, the actual value of the property at the time of the loss. It will be determined from a consideration of all relevant factors, including the purchase price (or value at the time of acquisition) and the replacement cost of the property involved. When appropriate, depreciation will be applied in accordance with the type of property involved and its age and condition at the time of the loss.

(2) Damaged Property. The allowable compensation for damaged items will normally be the cost of repairs, but not to exceed the actual value of the property at the time of the damage. In the event that any item is determined to have been damaged to such an extent that it is beyond economic repair, the compensation will be the actual value at the time of damage, less any salvage value which the property may have.

D. Replacement in Kind. The Government may at its option replace the property in kind rather than pay compensation.

E. Settlement Authority. The appropriate Associate, Regional, or Field Solicitor, or his designee, may administratively determine and settle claims under these regulations for the Department of the Interior.

F. Final Denial and Reconsideration. Any claimant who is dissatisfied with an administrative determination of his claim may ask for reconsideration within a period of six months from the date of the determination. Notice of the determination shall be in writing and sent to the claimant, his authorized agent, or legal representative by certified or registered mail.

Upon timely filing of a request for reconsideration, the agency shall have six months from the date of filing in which to make a final disposition of the claim. Notice of final action on a request for reconsideration shall be effected in the same manner as above.

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