

Department of the Navy, DoD

§ 750.43

States not later than 6 months after the date of mailing of notice of final denial of the claim. 28 U.S.C. 2401(b). The failure of the DON to make final disposition of a claim within 6 months after it is presented shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim. 28 U.S.C. 2675(a).

§§ 750.37–750.40 [Reserved]

Subpart C—Military Claims Act

§ 750.41 Scope of subpart C.

This section prescribes the substantive bases and special procedural requirements for the settlement of claims against the United States for death, personal injury, or damage, loss, or destruction of property:

(a) *Caused by military personnel or civilian employees of the Department of the Navy (DON) (hereinafter DON personnel).* For the purposes of this section, DON personnel include all military personnel of the Navy and Marine Corps, volunteer workers, and others serving as employees of the DON with or without compensation, and members of the National Oceanic and Atmospheric Administration or of the Public Health Service when serving with the DON. DON personnel does not include DON contractors or their employees.

(b) *Incident to noncombat activities of the DON.* Claims for personal injury or death of a member of the Armed Forces or Coast Guard, or civilian officer or employee of the U.S. Government whose injury or death is incident to service, however, are not payable.

(c) *Territorial limitation.* There is no geographical limitation on the application of the MCA, but if a claim arising in a foreign country is cognizable under the Foreign Claims Act (10 U.S.C. 2734), the claim shall be processed under that statute. See 10 U.S.C. 2733(b)(2).

(d) *Suit.* The MCA authorizes the administrative settlement and payment of certain claims. The United States has not consented to be sued.

§ 750.42 Statutory authority.

10 U.S.C. 2733, as amended, commonly referred to as the Military Claims Act (MCA).

§ 750.43 Claims payable.

(a) *General.* Unless otherwise prescribed, a claim for personal injury, death, or damage or loss of real or personal property is payable under this provision when:

(1) Caused by an act or omission determined to be negligent, wrongful, or otherwise involving fault of DON personnel acting within the scope of their employment; or

(2) Incident to noncombat activities of the DON. A claim may be settled under this provision if it arises from authorized activities essentially military in nature, having little parallel in civilian pursuits, and in which the U.S. Government has historically assumed a broad liability, even if not shown to have been caused by any particular act or omission by DON personnel while acting within the scope of their employment. Examples include practice firing of missiles and weapons, sonic booms, training and field exercises, and maneuvers that include operation of aircraft and vehicles, use and occupancy of real estate, and movement of combat or other vehicles designed especially for military use. Activities incident to combat, whether or not in time of war, and use of DON personnel during civil disturbances are excluded.

(b) *Specific claims payable.* Claims payable by the DON under § 750.43(a) (1) and (2) shall include, but not be limited to:

(1) *Registered or insured mail.* Claims for damage to, loss, or destruction, even if by criminal acts, of registered or insured mail while in the possession of DON authorities are payable under the MCA. This provision is an exception to the general requirement that compensable damage, loss, or destruction of personal property be caused by DON personnel while acting within the scope of their employment or otherwise incident to noncombat activities of the DON. The maximum award to a claimant under this section is limited to that to which the claimant would be entitled from the Postal Service under the registry or insurance fee paid. The award shall not exceed the cost of the item to the claimant regardless of the fees paid. Claimant may be reimbursed for the postage and registry or insurance fees.

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(2) *Property bailed to the DON.* Claims for damage to or loss of personal property bailed to the DON, under an express or implied agreement are payable under the MCA, even though legally enforceable against the U.S. Government as contract claims, unless by express agreement the bailor has assumed the risk of damage, loss, or destruction. Claims filed under this paragraph may, if in the best interest of the U.S. Government, be referred to and processed by the Office of the General Counsel, DON, as contract claims.

(3) *Real property.* Claims for damage to real property incident to the use and occupancy by the DON, whether under an express or implied lease or otherwise, are payable under the MCA even though legally enforceable against the DON as contract claims. Claims filed under this paragraph may, if in the best interest of the U.S. Government, be referred to and processed by the Office of the General Counsel, DON, as contract claims.

(4) *Property of U.S. military personnel.* Claims of U.S. military personnel for property lost, damaged, or destroyed under conditions in § 750.43(a) (1) and (2) occurring on a military installation, not payable under the Military Personnel and Civilian Employees' Claims Act, are payable under the MCA.

(5) *Health care and Legal Assistance Providers.* Claims arising from the personal liability of DON health care and legal assistance personnel for costs, settlements, or judgments for negligent acts or omissions while acting within the scope of assigned duties or employment are payable under the MCA. See § 750.54.

§ 750.44 Claims not payable.

(a) Any claim for damage, loss, destruction, injury, or death which was proximately caused, in whole or in part, by any negligence or wrongful act on the part of the claimant, or his agent or employee, unless the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances, and then only to the extent permitted by the law.

(b) Any claim resulting from action by the enemy or resulting directly or

indirectly from any act by armed forces engaged in combat.

(c) Any claim for reimbursement of medical, hospital, or burial expenses to the extent already paid by the U.S. Government.

(d) Any claim cognizable under:

(1) Military Personnel and Civilian Employees' Claims Act, as amended. 31 U.S.C. 3721.

(2) Foreign Claims Act. 10 U.S.C. 2734.

(3) 10 U.S.C. 7622, relating to admiralty claims. See part 752 of this Chapter.

(4) Federal Tort Claims Act. 28 U.S.C. 2671, 2672, and 2674-2680.

(5) International Agreements Claims Act. 10 U.S.C. 2734a and 2734b.

(6) Federal Employees' Compensation Act. 5 U.S.C. 8101-8150.

(7) Longshore and Harbor Workers' Compensation Act. 33 U.S.C. 901-950.

(e) Any claim for damage to or loss or destruction of real or personal property founded in written contract [except as provided in § 750.43(b) (2) and (3)].

(f) Any claim for rent of real or personal property [except as provided in § 750.43(b) (2) and (3)].

(g) Any claim involving infringement of patents.

(h) Any claim for damage, loss, or destruction of mail prior to delivery by the Postal Service to authorized DON personnel or occurring due to the fault of, or while in the hands of, bonded personnel.

(i) Any claim by a national, or corporation controlled by a national, of a country in armed conflict with the United States, or an ally of such country, unless the claimant is determined to be friendly to the United States.

(j) Any claim for personal injury or death of a member of the Armed Forces or civilian employee incident to his service. 10 U.S.C. 2733(b)(3).

(k) Any claim for damage to or loss of bailed property when bailor specifically assumes such risk.

(l) Any claim for taking private real property by a continuing trespass or by technical trespass such as overflights of aircraft.

(m) Any claim based solely on compassionate grounds.