

SUBCHAPTER B—RECEIPT, ADMINISTRATION, AND PAYMENT OF CLAIMS UNDER TITLE I OF THE WAR CLAIMS ACT OF 1948, AS AMENDED

PART 504—FILING OF CLAIMS AND PROCEDURES THEREFOR

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AUTHORITY: Sec. 2, Pub. L. 896, 80th Cong., as amended (50 U.S.C. App. 2001).

SOURCE: 66 FR 49844, Oct. 1, 2001, unless otherwise noted.

§504.1 Claim defined.

(a) This subchapter is included solely in order to provide for the adjudication of any additional claims that may arise on behalf of survivors of deceased civilians and military veterans who had been listed as missing during the Vietnam conflict but were subsequently determined to have been interned, in hiding, or captured by a hostile force in Southeast Asia (see §504.2(a)(3) and (b)(3)). The Commission no longer has authority to receive or consider any other types of claims based on the internment of civilians or the maltreatment of military servicemen held as prisoners of war by forces hostile to the United States.

(b) A properly completed and executed application made on an official form provided by the Foreign Claims Settlement Commission for such purpose constitutes a claim and will be processed under the laws administered by the Commission.

(c) Any communication, letter, note, or memorandum from a claimant, or the claimant's duly authorized representative, or a person acting as next friend of a claimant who is not legally competent, setting forth sufficient facts to apprise the Commission of an interest to apply under the provisions of sections 5(i) and 6(f) of the Act, will be deemed to be an informal claim. Where an informal claim is received and an official form is forwarded for

completion and execution by the applicant, that official form will be considered as evidence necessary to complete the initial claim, and unless that official form is received within thirty (30) days from the date it was transmitted for execution, if the claimant resides in the continental United States, or forty-five (45) days if outside the continental United States, the claim may be disallowed.

§504.2 Time within which claims may be filed.

(a) Claims of individuals entitled to benefits under section 5(i) of the War Claims Act of 1948, as added by Public Law 91-289, will be accepted by the Commission during the period beginning June 24, 1970, and ending:

(1) June 24, 1973, inclusive;

(2) 3 years from the date the civilian American citizen by whom the claim is filed returned to the jurisdiction of the United States; or

(3) 3 years from the date upon which the Commission, at the request of a potentially eligible survivor, makes a determination that the civilian American citizen has actually died or may be presumed to be dead, in the case of any civilian American citizen who has not returned to the jurisdiction of the United States, whichever of the preceding dates last occurs.

(b) Claims of individuals entitled to benefits under section 6(f) of the War Claims Act of 1948, as added by Public Law 91-289, will be accepted by the Commission during the period beginning June 24, 1970, and ending:

(1) June 24, 1973, inclusive;

(2) 3 years from the date the prisoner of war by whom the claim is filed returned to the jurisdiction of the Armed Forces of the United States; or

(3) 3 years from the date the Department of Defense makes a determination that the prisoner of war has actually died or is presumed to be dead, in the case of any prisoner of war who has not returned to the jurisdiction of the Armed Forces of the United States,

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whichever of the preceding dates last occurs.

§ 504.3 Official claim forms.

Official forms are provided for use in the preparation of claims for submission to the Commission for processing. Claim forms are available at the Washington offices of the Commission and through other offices as the Commission may designate. The official claim form for all claims under section 5(i) and 6(f) has been designated FCSC Form 289, "Application for Compensation for Members of the Armed Forces of the United States Held as Prisoner of War in Vietnam; for Persons Assigned to Duty on board the 'U.S.S. Pueblo' Captured by Military Forces of North Korea; for Civilian American Citizens Captured or Who Went into Hiding to Avoid Capture or Internment in Southeast Asia During the Vietnam Conflict and, in Case of Death of any Such Person, for Their Survivors."

§ 504.4 Place of filing claims.

Claims must be mailed or delivered in person to the Foreign Claims Settlement Commission, 600 E Street, NW, Room 6002, Washington, DC 20579.

§ 504.5 Documents to accompany forms.

All claims filed pursuant to sections 5(a) and 6(f) of the Act must be accompanied by evidentiary documents, instruments, and records as outlined in the instruction sheet attached to the claim form.

§ 504.6 Receipt of claims.

(a) *Claims deemed received.* A claim will be deemed to have been received by the Commission on the date post-marked, if mailed, or if delivery is made in person, on the date of delivery at the offices of the Commission in Washington, DC.

(b) *Claims developed.* In the event that a claim has been insufficiently prepared so as to preclude processing thereof, the Commission may request the claimant to furnish whatever supplemental evidence, including the completion and execution of an official claim form, as may be essential to the processing of the claim. In case the evidence or official claim form requested

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is not returned within the time which may be designated by the Commission, the claim may be deemed to have been abandoned and may be disallowed.

PART 505—PROVISIONS OF GENERAL APPLICATION

Sec.

505.1 Persons eligible to file claims.

505.2 Persons under legal disability.

505.3 Definitions applicable under the Act.

AUTHORITY: Sec. 2, Pub. L. 896, 80th Cong., as amended (50 U.S.C. App. 2001).

SOURCE: 66 FR 49844, Oct. 1, 2001, unless otherwise noted.

§ 505.1 Persons eligible to file claims.

Persons eligible to file claims with the Commission under the provisions of sections 5(i) and 6(f) of the War Claims Act of 1948, as amended, are:

(a) Civilian American citizens captured and held in Southeast Asia or their eligible survivors, under the provisions of section 5(i) of the Act; and

(b) Members of the Armed Forces of the United States held as prisoners of war during the Vietnam conflict or their eligible survivors, under section 6(f) of the Act.

§ 505.2 Persons under legal disability.

(a) Claims may be submitted on behalf of persons who, being otherwise eligible to make claims under the provisions of sections 5(i) and 6(f), are incompetent or otherwise under any legal disability, by the natural or legal guardian, committee, conservator, curator, or any other person, including the spouse of the claimant, whom the Commission determines is charged with the care of the claimant.

(b) Upon the death of any individual for whom an award has been made, the Commission may consider the initial application filed by or in behalf of the decedent as a formal claim for the purpose of reissuing the award to the next eligible survivor in the order of preference as set forth under sections 5(i) and 6(d)(4) of the Act.

§ 505.3 Definitions applicable under the Act.

Child means:

(1) A natural or adopted son or daughter of a deceased prisoner of war

or a deceased civilian prisoner of war or a deceased American citizen including any posthumous son or daughter of such deceased person.

(2) Any son or daughter of a deceased person born out of wedlock will be deemed to be a child of the deceased for the purpose of this Act, if:

(i) Legitimated by a subsequent marriage of the parents,

(ii) Recognized as a child of the deceased by his or her admission, or

(iii) So declared by an order or decree of any court of competent jurisdiction.

Husband means the surviving male spouse of a deceased prisoner of war or of a deceased civilian American citizen who was married to the deceased at the time of her death by a marriage valid under the applicable law of the place entered into.

Natural guardian means father and mother who shall be deemed to be the natural guardians of the person of their minor children. If either dies or is incapable of action, the natural guardianship of the person shall devolve upon the other. In the event of death or incapacity of both parents, then the blood relative, paternal or maternal, standing in loco parentis to the minor shall be deemed the natural guardian.

Parent means:

(1)(i) The natural or adoptive father or mother of a deceased prisoner of war, or any other individual standing in loco parentis to the deceased person for a period of not less than 1 year immediately preceding the date of that person's entry into active service and during at least 1 year of the person's minority. Not more than one mother or one father as defined shall be recognized in any case. An individual will not be recognized as standing in loco parentis if the natural parents or adoptive parents are living, unless there is affirmative evidence of abandonment and renunciation of parental duties and obligations by the natural or adoptive parent or parents prior to entry into active service by the deceased prisoner of war;

(ii) An award in the full amount allowable had the deceased prisoner of war survived may be made to only one parent when it is shown that the other parent has died or if there is affirmative evidence of abandonment and re-

nunciation of parental duties and obligations by the other parent.

(2) The father of an illegitimate child will not be recognized as such for purposes of the Act unless evidence establishes that:

(i) He has legitimated the child by subsequent marriage with the mother;

(ii) Recognized the child as his by written admission prior to enlistment of the deceased in the armed forces or entry into an overseas duty status; or

(iii) Prior to death of the child he has been declared by decree of a court of competent jurisdiction to be the father.

Widow means the surviving female spouse of a deceased prisoner of war or a deceased civilian American citizen who was married to the deceased at the time of his death by marriage valid under the applicable law of the place where entered into.

PART 506—ELIGIBILITY REQUIREMENTS FOR COMPENSATION

Subpart A—Civilian American Citizens

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AUTHORITY: Sec. 2, Pub. L. 896, 80th Cong., as amended (50 U.S.C. App. 2001).

SOURCE: 66 FR 49844, Oct. 1, 2001, unless otherwise noted.

Subpart A—Civilian American Citizens

§ 506.1 “Civilian American citizen” defined.

Civilian American citizen means any person who, being then a citizen of the United States, was captured in Southeast Asia during the Vietnam conflict by any force hostile to the United States, or who went into hiding in Southeast Asia in order to avoid capture or internment by any such hostile force.

§ 506.2 Other definitions.

Calendar month means the period of time between a designated day of any given month and the date preceding a similarly designated day of the following month.

Citizen of the United States means a person who under applicable law acquired citizenship of the United States by birth, by naturalization, or by derivation.

Dependent husband means the surviving male spouse of a deceased civilian American citizen who was married to the deceased at the time of her death by a marriage valid under the applicable law of the place where entered into.

Force hostile to the United States means any organization or force in Southeast Asia, or any agent or employee thereof, engaged in any military or civil activities designed to further the prosecution of its armed conflict against the Armed Forces of the United States during the Vietnam conflict.

Southeast Asia means, but is not necessarily restricted to, the areas of Vietnam, Laos, and Cambodia.

Went into hiding means the action taken by a civilian American citizen when that person initiated a course of conduct consistent with an intention to evade capture or detention by a hostile force in Southeast Asia.

§ 506.3 Rate of benefits payable.

Detention benefits awarded to a civilian American citizen will be paid at the rate of \$150 for each calendar month of internment or during the period in which that civilian American citizen went into hiding to avoid capture and internment by a hostile force. Awards

shall take account of fractional parts of a calendar month.

§ 506.4 Survivors entitled to award of detention benefits.

In case of death of a civilian American citizen who would have been entitled to detention benefits under the War Claims Act of 1948, as amended, benefits will be awarded, if claim is made, only to the following persons:

- (a) Widow or husband if there is no child or children of the deceased;
- (b) Widow or dependent husband and child or children of the deceased, one-half to the widow or dependent husband and the other half to the child or children in equal shares;
- (c) The child or children of the deceased in equal shares if there is no widow or dependent husband, if otherwise qualified.

§ 506.5 Persons not eligible to award of civilian detention benefits.

An individual is disqualified as a “civilian American citizen” under the Act, and thus is precluded from receiving an award of detention benefits, if that person:

- (a) Voluntarily, knowingly, and without duress, gave aid to or collaborated with or in any manner served the detaining hostile force; or
- (b) While detained, was a regularly appointed, enrolled, enlisted, or inducted member of the Armed Forces of the United States.

Subpart B—Prisoners of War

§ 506.10 “Vietnam conflict” defined.

Vietnam conflict refers to the period beginning February 28, 1961, and ending on a date to be determined by Presidential proclamation or concurrent resolution of the Congress. (For purposes of determining eligibility for certain veterans’ benefits, the President has proclaimed the date of May 7, 1975, to be the ending date of the “Vietnam era” (Presidential Proclamation No. 4373, 38 U.S.C. 101 note). In addition, Congress has set May 7, 1975, as the ending date of the “Vietnam conflict” for purposes of payment of interest on missing military service members’ deposits in the United States Treasury under 10 U.S.C. 1035. However, neither

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the President nor the Congress has set an ending date for the Vietnam conflict for purposes of determining eligibility for compensation under 50 U.S.C. App. 2004 and 2005.)

§ 506.11 “Prisoner of war” defined.

Prisoner of war means any regularly appointed, enrolled, enlisted or inducted member of the Armed Forces of the United States who was held by any force hostile to the United States for any period of time during the Vietnam conflict.

§ 506.12 Membership in the Armed Forces of the United States; establishment of.

Regular appointment, enrollment, enlistment or induction in the Armed Forces of the United States must be established by certification obtained from the Department of Defense.

§ 506.13 “Armed Forces of the United States” defined.

Armed Forces of the United States means the United States Air Force, Army, Navy, Marine Corps and Coast Guard, and commissioned officers of the U.S. Public Health Service who were detailed for active duty with the Armed Forces of the United States.

§ 506.14 “Force hostile to the United States” defined.

Force hostile to the United States means any organization or force in Southeast Asia, or any agent or employee thereof, engaged in any military or civil activities designed to further the prosecution of its armed conflict against the Armed Forces of the United States during the Vietnam conflict.

§ 506.15 Geneva Convention of August 12, 1949.

The Geneva Convention of August 12, 1949, as identified in section 6(f) of the War Claims Act of 1948, as amended, is the “Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949” which is included under the “Geneva Convention of August 12, 1949, for the Protection of War Victims,” entered into by the United States and other governments, including the former government in North

Vietnam which acceded to it on June 28, 1957.

§ 506.16 Failure to meet the conditions and requirements prescribed under the Geneva Convention of August 12, 1949.

For the purpose of this part, obligations under the Geneva Convention of August 12, 1949, consist of the responsibility assumed by the contracting parties thereto with respect to prisoners of war within the meaning of the Convention, to comply with and to fully observe the provisions of the Convention, and particularly those articles relating to food rations of prisoners of war, humane treatment, protection, and labor of prisoners of war, and the failure to abide by the conditions and requirements established in such Convention by any hostile force with which the Armed Forces of the United States were engaged in armed conflict.

§ 506.17 Rate of and basis for award of compensation.

(a) Compensation allowed a prisoner of war during the Vietnam conflict under section 6(f)(2) of the War Claims Act of 1948, as amended, will be paid at the rate of \$2 per day for each day on which that person was held as prisoner of war and on which the hostile force, or its agents, failed to furnish the quantity and quality of food prescribed for prisoners of war under the Geneva Convention of August 12, 1949.

(b) Compensation allowed a prisoner of war during the Vietnam conflict under section 6(f)(3) of the Act, will be paid at the rate of \$3 per day for each day on which that person was held as a prisoner of war and on which the hostile force failed to meet the conditions and requirements under the provisions of the Geneva Convention of August 12, 1949 relating to labor of prisoners of war or for inhumane treatment by the hostile force by which such person was held.

(c) Compensation under paragraphs (a) and (b) of this section will be paid to the prisoner of war or qualified applicant on a lump-sum basis at a total rate of \$5 per day for each day the prisoner of war was entitled to compensation.

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§ 506.18 Entitlement of survivors to award in case of death of prisoner of war.

In case of death of a prisoner of war who would have been entitled to an award of compensation under section 6(f) (2) and (3) of the War Claims Act of 1948, as amended, the compensation will be awarded, if claim is made, only to the following persons:

- (a) Widow or husband if there is no child or children of the deceased;
- (b) Widow or husband and child or children of the deceased, one-half to the widow or husband and the other half to the child or children of the deceased in equal shares;
- (c) Child or children of the deceased (in equal shares) if there is no widow or husband; and
- (d) Parents (in equal shares) if there is no widow, husband or child.

§ 506.19 Members of the Armed Forces of the United States precluded from receiving award of compensation.

Any member of the Armed Forces of the United States, who at any time, voluntarily, knowingly, and without duress gave aid to or collaborated with, or in any manner served any force hostile to the United States, is precluded from receiving an award of compensation based on that member's capture and internment.

PART 507—PAYMENT

Sec.

507.1 Payments under the War Claims Act of 1948, as amended by Pub. L. 91-289.

507.2 Payments to persons under legal disability.

507.3 Reissuance of awards.

AUTHORITY: Sec. 2, Pub. L. 80-896, as amended (50 U.S.C. App. 2001).

SOURCE: 66 FR 49844, Oct. 1, 2001, unless otherwise noted.

§ 507.1 Payments under the War Claims Act of 1948, as amended by Public Law 91-289.

(a) Upon a determination by the Commission as to the amount and validity of each claim filed pursuant to section 5(i) and 6(f) of the War Claims Act of 1948, as amended, any award made thereunder will be certified by the Commission to the Secretary of the

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Treasury for payment out of funds appropriated for this purpose, in favor of the civilian internee or prisoner of war found entitled thereto.

(b) Awards made to survivors of deceased civilian internees or prisoners of war will be certified to the Secretary of the Treasury for payment to the individual member or members of the class or classes of survivors entitled to receive compensation in the full amount of the share to which each survivor is entitled, and if applicable, under the procedure set forth in § 507.3, except that as to persons under legal disability, payment will be made as specified in § 507.2.

§ 507.2 Payments to persons under legal disability.

Any awards or any part of an award payable under sections 5(i) and 6(f) of the Act to any person under legal disability may, in the discretion of the Commission, be certified for payment for the use of the claimant, to the natural or legal guardian, committee, conservator or curator, or if there is no natural or legal guardian, committee, conservator or curator, then, in the discretion of the Commission, to any person, including the spouse of such person, or the Chief Officer of the hospital in which the claimant may be a patient, whom the Commission may determine is charged with the care of the claimant. In the case of a minor, any part of the amount payable may, in the discretion of the Commission, be certified for payment to that minor.

§ 507.3 Reissuance of awards.

Upon the death of any claimant entitled to payment of an award, the Commission will cause the award to be canceled and the amount of the award will be redistributed to the survivors of the same class or to members of the next class of eligible survivors, if appropriate, in the order of preference as set forth under the Act.

PART 508—HEARINGS

Sec.

508.1 Basis for hearing.

508.2 Request for hearing.

508.3 Notification to claimant.

508.4 Failure to file request for hearing.

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- 508.5 Purpose of hearing.
- 508.6 Resume of hearing, preparation of.
- 508.7 Action by the Commission.
- 508.8 Application of other regulations.

AUTHORITY: Sec. 2, Pub. L. 896, 80th Cong., as amended (50 U.S.C. App. 2001).

SOURCE: 66 FR 49844, Oct. 1, 2001, unless otherwise noted.

§ 508.1 Basis for hearing.

Any claimant whose application is denied or is approved for less than the full allowable amount of his or her claim will be entitled to a hearing before the Commission or its representative with respect to that claim. Hearings may also be held on the Commission's own motion.

§ 508.2 Request for hearing.

Within 30 days after the Commission's notice of denial of a claim, or approval for a lesser amount than claimed, has been posted by the Commission, the claimant, if a hearing is desired, must notify the Commission in writing, and must set forth in full the reasons for requesting the hearing, including any statement of law or facts upon which the claimant relies.

§ 508.3 Notification to claimant.

Upon receipt of such a request, the Commission will schedule a hearing and notify the claimant as to the date and place the hearing is to be held. No later than 10 days prior to the scheduled hearing date, the claimant must submit all documents, briefs, or other additional evidence relevant to his or her appeal.

§ 508.4 Failure to file request for hearing.

The failure to file a request for a hearing within the period specified in § 509.2 of this chapter will be deemed to constitute a waiver of right to a hearing and the decision of the Commission will constitute a full and final disposition of the case.

§ 508.5 Purpose of hearing.

(a) Hearings will be conducted by the Commission, its designee or designees. Oral testimony and documentary evidence, including depositions that may have been taken as provided by statute and the rules of practice, may be offered

in evidence on claimant's behalf or by counsel for the Commission designated by it to represent the public interest opposed to the allowance of an unjust or unfounded claim or portion thereof, and either may cross-examine as to evidence offered through witnesses on behalf of the other. Objections to the admission of any such evidence will be ruled upon by the presiding officer.

(b) Hearings may be stenographically recorded either at the request of the claimant or at the discretion of the Commission. A claimant making such a request must notify the Commission at least 10 days prior to the hearing date. When a stenographic record of a hearing is ordered at the claimant's request, the cost of such reporting and transcription may be charged to the claimant.

(c) Such hearings will be open to the public.

§ 508.6 Résumé of hearing, preparation of.

Following each hearing, the hearing officer will prepare a résumé of the hearing, specifying the issues on which the hearing was based, and including a list of documents and contents and other items relative to the issues that were introduced as evidence. A brief analysis of oral testimony will also be prepared and included in the résumé of each hearing not stenographically reported.

§ 508.7 Action by the Commission.

After the conclusion of the hearing and a review of the résumé, the Commission may affirm, modify, or reverse its former action with respect to the claim, including a denial or reduction in the amount of the award theretofore approved. All findings of the Commission concerning the persons to whom compensation is payable, and the amounts thereof, are conclusive and not reviewable by any court.

§ 508.8 Application of other regulations.

To the extent they are not inconsistent with the regulations set forth under provisions of this subchapter,

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the other regulations of the Commission will also be applicable to the claims filed hereunder.