

## Department of the Navy, DoD

## § 718.1

with the request that payment of the death gratuity be made upon receipt of the certification of beneficiary entitlement from the Chief of Naval Personnel (Pers-732).

(2) *Navy Relief.* In cases where there is immediate need prior to receipt of the death gratuity, the Navy Relief Society will be contacted by the Casualty Assistance Calls Program officer.

(c) *Action by the Chief of Naval Personnel.* (1) In all cases where death gratuity is not authorized to be paid locally and in cases where authority exists to pay locally but entitlement is questionable (see paragraph (a)(2) of this section), the Chief of Naval Personnel (Pers-732) will expedite adjudication of claims. As indicated in paragraph (b)(1) of this section CACP officers will refer cases of urgent financial need to the Chief of Naval Personnel (Pers-732) by message for action.

(2) If a minor is entitled to a death gratuity under 10 U.S.C. 1477 not exceeding \$1,000, such death gratuity may be paid to the father or mother as natural guardian on behalf of the minor, provided a legally appointed guardian has not been appointed, upon substantiation by a sworn (notarized) statement of the natural guardian:

(i) That no legal guardian has been appointed and that such an appointment is not contemplated;

(ii) The relationship of the natural guardian to the minor;

(iii) That the minor is in the actual custody of the natural guardian;

(iv) That an amount paid to the natural guardian will be held for, or applied to, the use and benefit of the minor.

If the death gratuity to which a minor is entitled exceeds \$1,000, the appointment of a legal guardian on behalf of the minor is requested. Certification of the minor eligible to receive the death gratuity is made by the Chief of Naval Personnel (Pers-732) and payment is effected by the Navy Finance Center, Cleveland, OH 44199;

(d) *Cross-servicing procedure.* Payment of the death gratuity may be made by a disbursing officer who is maintaining the pay record of a member of another service, provided the command to which the member is attached and

which maintains his service record is in the immediate vicinity and certifies the beneficiary eligible to receive payment on the proper voucher (DD Form 397). Otherwise the pay record will be sent to the Army Finance Center, Air Force Finance Center, Commandant of the Marine Corps (Code CDB), the Navy Finance Center, of the Commandant, U.S. Coast Guard, as appropriate.

[24 FR 7523, Sept. 18, 1959, as amended at 44 FR 25647, May 2, 1979; 45 FR 43165, June 26, 1980]

### Subpart C—Provisions Applicable to the Marine Corps

#### § 716.11 Procedures.

(a) *Action.* Commanding officers will direct immediate payment of the gratuity where the deceased member's spouse was, in fact, residing with the member on or near the station of duty at the time of the member's death while on active duty, active duty for training, or inactive-duty training. Every effort should be made to effect such payment promptly (within 24 hours, if possible). In cases where the eligible survivor residing with the member on or near the duty station is other than a spouse, commanding officers may direct the payment of death gratuity when the case can be properly determined, and an urgent need exists for immediate payment. Proper determination is imperative.

(b) *Qualifications.* (1) Where any doubt exists as to the legal recipient of the gratuity, the case will be referred to the Commandant of the Marine Corps (Code MSPA-1) for determination.

(2) [Reserved]

[24 FR 7523, Sept. 18, 1959, as amended at 44 FR 25648, May 2, 1979]

## PART 718—MISSING PERSONS ACT

Sec.

718.1 General provisions.

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### § 718.1 General provisions.

(a) Under the provisions of the Missing Persons Act, as amended, a finding

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of presumptive death is made by the Secretary of the Navy when a survey of all available sources of information indicates beyond doubt that the presumption of continuance of life has been overcome. When a finding of presumptive death is made, a man's pay accounts are closed as of the day following the expiration of the 12 months' absence or a longer period when justified, and the various benefits, such as the six months' gratuity, become payable. A finding of presumptive death concerning an officer or enlisted man of the Navy means simply that as of the date thereof he is for the purposes of Naval administration no longer alive. It does not mean that death occurred on that or on any other certain date.

(b) Findings of presumptive death are never made when the "missing" status has not continued for at least 12 months. Whenever, subsequent to the expiration of the 12th month, cumulative or other evidence establishes by its preponderance that a "missing" person is no longer alive, a prompt finding of presumptive death will be made. Also, such a finding will be made whenever justified by the lapse of time beyond the 12 months' absence without specific information being received.

(c) The Secretary of the Navy, or such subordinate as he may designate, has authority to make all determinations necessary in the administration of the act, and for the purposes of the act determinations so made shall be conclusive as to death or finding or death, as to any other status dealt with by the act, and as to any essential date including that upon which evidence or information is received in the Department. The determination of the Secretary of the Navy, or of such subordinate as he may designate, is conclusive as to whether information received concerning any person is to be construed and acted upon as an official report of death. When any information deemed to establish conclusively the death of any person is received in the department, action shall be taken thereon as an official report of death, notwithstanding any prior action relating to death or other status of such person. Under the foregoing provisions a determination of death is made prior

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to the expiration of 12 months when the evidence received is considered to establish conclusively the fact of death and settlement of accounts is made to the date established as the date of receipt of evidence on which the fact of death is established.

(Sec. 301, 80 Stat. 379; 5 U.S.C. 301. Interpret or apply 80 Stat. 112-117, 248-254; 5 U.S.C. 5561-5568, 37 U.S.C. 551-558)

[17 FR 5390, June 14, 1952]

### § 718.2 Allotments.

During such period as a person is in a status of missing, missing in action, interned in a foreign country, captured by a hostile force, beleaguered by a hostile force, or besieged by a hostile force, allotments from his pay and allowances may be initiated, continued, discontinued, increased, decreased, suspended or resumed in behalf of his dependents and for such other purposes as are justified by the circumstances and are in the interests of the person or of the Government.

(R.S. 161, sec. 5031, 70A Stat. 278, as amended; 5 U.S.C. 22, 10 U.S.C. 5031, 50 U.S.C. App. 1013-1015)

[26 FR 12658, Dec. 29, 1961]

### § 718.3 Transportation of dependents.

(a) Whenever a person in active service is officially reported as dead, injured, (Only when the anticipated period of hospitalization or treatment is expected to be of prolonged duration as shown by a statement of the commanding officer at the receiving hospital), missing for a period of 29 days or more, interned in a foreign country, or captured by a hostile force, his dependents, household and personal effects including one privately owned motor vehicle may be moved (including packing, crating, drayage, temporary storage, and unpacking of household and personal effects) to the official residence of record for any such person or to the residence of his dependent, next of kin, or other person entitled to receive custody of the effects in accordance with the provisions of paragraph (d) of this section; or, upon application by such dependent, next of kin, heir or legal representative, or other person determined in accordance with paragraph (d) of this section, or upon the

person's application if injured, to such location as may have been determined in advance or as may be subsequently approved, except that a reasonable relationship must exist between the condition and circumstances of the dependents and the destination to which transportation is requested. In the case of a person in an injured status, transportation of his dependents or household and personal effects may be authorized only when the hospitalization or treatment of the injured person will be of prolonged duration. Payment in money of amounts equal to such commercial transportation costs or a monetary allowance in lieu of transportation as authorized by law for the whole or such part of the travel for which transportation in kind is not furnished, may be authorized, when such travel has been completed.

(b) When the Secretary of the Navy or his designee determines that an emergency exists and that such sale would be in the best interests of the Government, he may provide for the disposition of the motor vehicles and other bulky items of such household and personal effects of the person by public or private sale. Prior to any such sale, and if practicable, a reasonable effort shall be made to determine the desires of the interested persons. The net proceeds received from such sale shall be transmitted to the owner, next of kin, heir or legal representative, or other person determined in accordance with paragraph (d) of this section; but if there be no such persons or if such persons or their addresses are not ascertainable within one year from the date of sale, the net proceeds may be covered into the Treasury as miscellaneous receipts.

(c) The Secretary of the Navy or his designee is authorized to store the household and personal effects of the person until such time as proper disposition can be made. The cost of such storage and transportation, including packing, crating, drayage, temporary storage, and unpacking of household and personal effects, will be charged against appropriations currently available.

(d) The following provisions apply to the determination of the "other person" or persons referred to in para-

graphs (a) and (b) of this section who may receive the effects or proceeds.

(1) If no duly appointed legal representative of the owner of the personal effects makes demand upon the Department of the Navy for the effects, the determination by naval authorities as to the next of kin or heirs of the owner of the personal effects may be made on the basis of the following:

(i) Personnel records; or

(ii) Other documents applicable to the case; or

(iii) Title 10 U.S.C., section 2771, to the extent that it prescribes an order of precedence among next of kin or heirs, namely, the widow or widower of the owner; if no widow or widower, then the child or children of the owner and descendants of deceased children, by representation; if none of the above, the parents of the owner or the survivor of them; or if none of the above, other persons determined to be eligible under the laws of the domicile of the owner.

(2) Such determination should be regarded as administrative rather than legal, as the determination does not vest title to effects or proceeds in the next of kin, heirs, or legal representative to whom the effects are delivered. Therefore, delivery of the personal effects to other than the owner will be made subject to the following advisory note which should be written on a copy of the inventory or in a letter:

Delivery of the personal effects into the custody of other than the owner thereof, by the Department of the Navy, does not in any way vest title to the effects in the recipient. Delivery of the effects to the recipient is made so that distribution may be made in accordance with the laws of the state in which the owner of the effects was legally domiciled or to restore the effects to the owner in the event of his return from a missing status.

(3) When it is impracticable to divide the personal effects of a person into equal shares, and two or more persons within a class, as provided in 10 U.S.C. section 2771, are entitled to receive the effects but cannot agree among themselves as to which one of them shall receive the effects, then all of the effects will be retained by either the Personal Effects Distribution Center at Norfolk,

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VA, or the Personal Effects Distribution Center at Oakland, CA, for a period of two years from the date of death of the member. At the expiration of the two-year period such effects will be sold.

(R.S. 161, sec. 5031, 70A Stat. 278, as amended; 5 U.S.C. 22, 10 U.S.C. 5031, 50 U.S.C. App. 1013-1015; Pub. L. 89-554, 80 Stat. 379 (5 U.S.C. 301))

[26 FR 12659, Dec. 29, 1961, as amended at 37 FR 6472, Mar. 30, 1972; 44 FR 22456, Apr. 16, 1979]

### § 718.4 Delegations.

The Secretary of the Navy has delegated to the Director, Personal Services Division, Bureau of Naval Personnel with respect to personnel in the Navy, and to the Head, Personal Affairs Branch Manpower Department (Code MSPA), United States Marine Corps, with respect to personnel in the Marine Corps, authority to make all determinations to administer the act.

(Pub. L. 89-554, 80 stat. 379 (5 U.S.C. 301))

[17 FR 5391, June 14, 1952, as amended at 19 FR 7959, Dec. 2, 1954; 44 FR 22456, Apr. 16, 1979]

## PART 719—REGULATIONS SUPPLEMENTING THE MANUAL FOR COURTS-MARTIAL

### Subparts A-B [Reserved]

### Subpart C—Trial Matters

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719.113-719.114 [Reserved]

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719.142 Suspension of counsel.

719.143 Petition for new trial under 10 U.S.C. 873.

719.144 Application for relief under 10 U.S.C. 869, in cases which have been finally reviewed.

719.145-719.150 [Reserved]

719.151 Furnishing of advice and counsel to accused placed in pretrial confinement.

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719.155 Application under 10 U.S.C. 874(b) for the substitution of an administrative form of discharge for a punitive discharge or dismissal.

AUTHORITY: 3 U.S.C. 301; 5 U.S.C. 301; 10 U.S.C. 815, 5013, 5148; 32 CFR 700.206 and 700.1202.

### Subparts A-B [Reserved]

### Subpart C—Trial Matters

#### § 719.112 Authority to grant immunity from prosecution.

(a) *General.* In certain cases involving more than one participant, the interests of justice may make it advisable to grant immunity, either transactional or testimonial, to one or more of the participants in the offense in consideration for their testifying for the Government or the defense in the investigation and/or the trial of the principal offender. Transactional immunity, as that term is used in this section, shall mean immunity from prosecution for any offense or offenses to which the compelled testimony relates. Testimonial immunity, as that term is used in this section, shall mean immunity from the use, in aid of future prosecution, of testimony or other information compelled under an order to testify (or any information directly or indirectly derived from such testimony or other information). The authority to grant either transactional or testimonial immunity to a witness is reserved to officers exercising general court-martial jurisdiction. This authority may be exercised in any case whether or not formal charges have been preferred and whether or not the matter has been referred for trial. The approval of the Attorney General of the United States on certain orders to testify may be required, as outlined below.

(b) *Procedure.* The written recommendation that a certain witness be granted either transactional or testimonial immunity in consideration for testimony deemed essential to the Government or to the defense shall be forwarded to an officer competent to convene a general court-martial for the witness for whom immunity is requested, *i.e.*, any officer exercising general court-martial jurisdiction. Such