

Subpart M—Claims Under the National Guard Claims Act (32 U.S.C. 715)

§ 842.100 Scope of this subpart.

This subpart explains how to settle claims against the United States arising out of the noncombat activities of the Air National Guard (ANG), when its members are acting within the scope of their employment and performing duty under 32 U.S.C. Contact HQ USAF/JACC for guidance on any claim for property damage, injury or death by the ANG which accrued prior to 29 December 1981.

§ 842.101 Definitions.

(a) *Appeal*. An appeal is a request by the claimant or claimant's authorized agent to reevaluate the final decision made on a claim. A request for reconsideration is considered as an appeal.

(b) *Air National Guard (ANG)*. The federally recognized Air National Guard of each state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

(c) *ANG member*. An ANG member is one who is performing duty under 32 U.S.C., section 316, 502, 503, 504, or 505 for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.

(d) *ANG duty status*—(1) *Active federal service*. ANG members may serve on active Federal duty under 10 U.S.C. to augment the active Air Force under certain circumstances or for certain types of duty or training (e.g., overseas training exercises and ANG alert duty). Duty under 10 U.S.C. does not fall under this subpart.

(2) *Federally funded duty*. ANG members perform specified federally funded duty or training under 32 U.S.C. such as weekend drills, annual training, field exercises, range firing, military schooling, full time unit support, or recruiting duties. Duty under 32 U.S.C. falls under this subpart for noncombat activities.

(3) *State duty*. State duty is duty not authorized by federal law but required by the governor of the state and paid for from state funds. Such duty includes civil emergencies (natural or other disasters), civil disturbances

(riots and strikes), and transportation requirements for official state functions, public health, or safety. State duty does not fall under this subpart.

(e) *Compromise*. A compromise is an agreed settlement based upon the facts, the law, and the application of the law to the facts.

(f) *Final denial*. A final denial is a letter from the settlement authority to the claimant or authorized agent advising of the decision to deny the claim.

(g) *Noncombat activity*. Noncombat activity is an act, other than combat, war or armed conflict, which is particularly military in character and has little parallel in the civilian community.

(h) *ANG technicians*. An ANG technician is a Federal employee employed under 32 U.S.C. 709. Tort claims arising out of his or her activity are settled under the Federal Tort Claims Act (FTCA).

§ 842.102 Delegations of authority.

This paragraph outlines the levels of authority authorized to settle claims brought under the National Guard Claims Act (32 U.S.C. 715).

(a) *Settlement authority*. (1) The Secretary of the Air Force has authority to:

- (i) Settle a claim for \$100,000 or less.
- (ii) Settle a claim for more than \$100,000, paying the first \$100,000 and reporting the excess to the General Accounting Office for payment.
- (iii) Deny a claim in any amount.

(2) The Judge Advocate General has delegated authority to settle a claim for \$100,000 or less, and deny a claim in any amount.

(3) The following individuals have delegated authority to settle a claim for \$25,000 or less, and deny a claim in any amount:

- (i) The Deputy Judge Advocate General.
- (ii) The Director of Civil Law.
- (iii) The Chief, Deputy Chief, and Branch Chiefs, Claims and Tort Litigation Staff.

(4) The SJA of 9AF for CENTCOM and the SJAs of USAFE and PACAF have delegated authority to settle claims payable or deny claims filed for \$25,000 or less.