

## § 10.914

## 20 CFR Ch. I (4-1-11 Edition)

(2) The employee incurred injury while riding with members of an Armed Force in a vehicle or other conveyance deployed to further an Armed Force's objectives in a contingency operation.

(b) An employee may incur injury in connection with service with an Armed Force in a contingency operation in situations other than those listed above. Additional situations will be determined by OWCP on a case-by-case basis.

### **§ 10.914 What are the responsibilities of the employing agency in the death gratuity payment process?**

Because some of the information needed to establish a claim under this subpart will not be readily available to the claimants, the employing agency of the deceased employee has significant responsibilities in the death gratuity claim process. These responsibilities are as follows:

(a) The agency must completely fill out form CA-42 immediately upon learning of an employee's death that may be eligible for benefits under this subpart. The agency must complete form CA-42 as promptly as possible if notified by OWCP that a survivor filed a claim based on the employee's death. The agency should provide as much information as possible regarding the circumstances of the employee's injury and his or her assigned duties at the time of the injury, so that OWCP can determine whether the injury was incurred in the performance of duty and whether the employee was performing service in connection with an Armed Force in a contingency operation at the time.

(b) The employing agency must promptly transmit any form CA-41's received from claimants to OWCP. The employer must also promptly transmit to OWCP any other claim or paper submitted that appears to claim compensation on account of the employee's death.

(c) The employing agency must maintain any designations completed by the employee and signed by a representative of the agency in the employee's official personnel file or a related system of records. The agency must forward any such forms to OWCP if the agency submits form CA-42 noti-

fying OWCP of the employee's death. The agency must also forward any other paper signed by the employee and employing agency that appears to make designations of the death gratuity.

(d) If requested by OWCP, the employing agency must determine whether a survivor, who is claiming the death gratuity based on his or her status as an illegitimate child of a deceased male employee, has offered satisfactory evidence to show that he or she is in fact the employee's child.

(e) The employing agency must notify OWCP of any other death gratuity payments under any other law of the United States for which the employee's death qualifies. The employing agency also must notify OWCP of any other death gratuity payments that have been paid based on the employee's death.

(f) Non-appropriated fund instrumentalities must fulfill the same requirements under this subpart as any other employing agency.

### **§ 10.915 What are the responsibilities of OWCP in the death gratuity payment process?**

(a) If the death gratuity payment process is initiated by the employing agency's submission of form CA-42, OWCP will identify living potential claimants. OWCP will make a reasonable effort to provide claim form CA-41's to any known potential claimants and provide instructions on how to file a claim for the death gratuity payment.

(b) If the death gratuity payment process is initiated by a claimant's submission of a claim, OWCP will contact the employing agency and prompt it to submit form CA-42. OWCP will then review the information provided by both the claim and form CA-42, and OWCP will attempt to identify all living survivors or alternate beneficiaries who may be eligible for payment of the gratuity.

(c) If OWCP determines that the evidence is not sufficient to meet the claimant's burden of proof, OWCP will notify the claimant of the additional evidence needed. The claimant will be allowed at least 30 days to submit the additional evidence required. OWCP

may also request additional information from the employing agency.

(d) OWCP will review the information provided by the claimant and information provided by the employing agency to determine whether the claim satisfies all the requirements listed in § 10.912.

(e) OWCP will calculate the amount of the death gratuity payment and pay the beneficiaries as soon as possible after accepting the claim.

**§ 10.916 How is the amount of the death gratuity calculated?**

The death gratuity payment under this subpart equals \$100,000 minus the amount of any death gratuity payments that have been paid under any other law of the United States based on the same death. A death gratuity payment is a payment in the nature of a gift, beyond reimbursement for death and funeral expenses, relocation costs, or other similar death benefits. Only other death gratuity payments will reduce the amount of the death gratuity provided in this subpart. For this reason, death benefits provided to the same employee's survivors such as those under 5 U.S.C. 8133 as well as benefits paid under 5 U.S.C. 8134 are not death gratuity payments, and therefore have no effect on the amount of the death gratuity provided under this subpart.

(a) A payment provided under section 413 of the Foreign Service Act of 1980 (22 U.S.C. 3973), is a death gratuity payment, and if a deceased employee's survivors received that payment for the employee's death, the amount of the death gratuity paid to the survivors under this subpart would be reduced by the amount of the Foreign Service Act death gratuity. Other death gratuities that would affect the calculation of the amount payable include but are not limited to: the gratuity provision in section 1603 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Pub. L. 109-234, June 15, 2006); the \$10,000 death gratuity to the personal representative of civilian employees, at Title VI, Section 651 of the Omnibus Consolidated Appropriations Act of 1996 (Pub. L. 104-208, September 30, 1996); the death gratuity

for members of the Armed Forces or any employee of the Department of Defense dying outside the United States while assigned to intelligence duties, at 10 U.S.C. 1489; and the death gratuity for employees of the Central Intelligence Agency, at 50 U.S.C. 403k.

(b) The amount of the death gratuity under this section will be calculated before it is disbursed to the employee's survivors or alternate beneficiaries, by taking into account any death gratuities paid by the time of disbursement. Therefore, any designations made by the employee under § 10.909 are only applicable to the amount of the death gratuity as described in paragraph (a) of this section. The following examples are intended to provide guidance in this administration of this subpart.

(1) *Example One.* An employee's survivors are entitled to the Foreign Service Act death gratuity; the employee's spouse received payment in the amount of \$80,000 under that Act. A death gratuity is also payable under FECA; the amount of the FECA death gratuity that is payable is a total of \$20,000. That employee, using Form CA-40 had designated 50% of the death gratuity under this subpart to be paid to his neighbor John Smith who is still living. So, 50% of the death gratuity will be paid to his spouse and the remaining 50% of the death gratuity paid under this subpart would be paid to John Smith. This means the surviving spouse will receive \$10,000 and John Smith will receive \$10,000.

(2) *Example Two.* Employee dies in circumstances that would qualify her for payment of the gratuity under this subpart; her agency has paid the \$10,000 death gratuity pursuant to Public Law 104-208. The employee had not completed any designation form. The FECA death gratuity is reduced by the \$10,000 death gratuity and employee's spouse receives \$90,000.

(3) *Example Three.* An employee of the Foreign Service whose annual salary is \$75,000 dies in circumstances that would qualify for payment of both the Foreign Service Act death gratuity and the death gratuity under this subpart. Before his death, the employee designated that 40% of the death gratuity under this subpart be paid to his cousin Jane Smith, pursuant to the alternate