

(b) Waiver can be made when collection causes undue hardship to the injured party. Ordinarily, factors such as the following should be considered:

- (1) Permanent disability or disfigurement.
- (2) Decreased earning power.
- (3) Out of pocket losses.
- (4) Financial status of injured party.
- (5) Pension rights.
- (6) Other government benefits to the injured party.
- (7) An offer of settlement from a third party which includes virtually all the thirty party's assets, although the amount is considerably less than the calculation of the injured party's damages.

(c) A compromise can be made upon written request from the injured party or the injured party's legal representative when liability is questionable, the injured party received excessive treatment, or the litigation risks dictate, and either of the following occurs:

- (1) The injured party accepts less than the jury verdict expectancy. When this occurs, the Air Force should consider settling its claim in a ratio similar to that which the total settlement bears to the jury verdict expectancy.
- (2) The government's claim is almost as large as, or is larger than, the assets available for settlement.

**§ 842.125 Reconsideration of a waiver for undue hardship.**

A settlement authority may reconsider its disapproval of a waiver or compromise, when either:

- (a) The injured party submits new evidence.
- (b) Errors exist in claim submission or settlement.

**Subpart O—Nonappropriated Fund Claims**

**§ 842.126 Scope of this subpart.**

This subpart describes how to settle claims for and against the United States for property damage, personal injury, or death arising out of the operation of Nonappropriated Fund Instrumentalities (NAFIs).

**§ 842.127 Definitions.**

(a) *Army and Air Force Exchange Service (AAFES)*. The Army and Air Force

Exchange Service is a joint command of the Army and Air Force, under the jurisdiction of the Chiefs of Staff of the Army and Air Force, which provides exchange and motion picture services to authorized patrons.

(b) *Morale, welfare, and recreation (MWR) activities*. Air Force MWR activities are activities operated directly or by contract which provide programs to promote morale and well-being of the Air Force's military and civilian personnel and their dependents. They may be funded wholly with appropriated funds, primarily with nonappropriated funds (NAF), or with a combination of appropriated funds and NAFs.

(c) *Nonappropriated funds*. Nonappropriated funds are funds generated by Department of Defense military and civilian personnel and their dependents and used to augment funds appropriated by the Congress to provide a comprehensive morale-building, welfare, religious, educational, and recreational program, designed to improve the well-being of military and civilian personnel and their dependents.

(d) *Nonappropriated funds instrumentality*. A nonappropriated fund instrumentality is a Federal government instrumentality established to generate and administer nonappropriated funds for programs and services contributing to the mental and physical well-being of personnel.

**§ 842.128 Delegations of authority.**

(a) *Settlement authority*: (1) Each individual has the same delegated authority to settle a claim for which NAFs may be liable as that specified for a similar type claim in each subpart of this part. The decision of the settlement authority is binding upon the NAFI.

(2) The Judge Advocate General, in addition, has delegated authority to settle subparts F, G, and J type claims in any amount without referral to the Secretary of the Air Force or the General Accounting Office.

(3) The Chief, Deputy Chief, and Branch Chiefs, Claims and Tort Litigation Staff, in addition, have delegated authority to settle subparts F, G, and J type claims for \$100,000 or less without referral to the Secretary of the Air

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Force or the General Accounting Office.

(b) *Redelegation of authority.* A settlement authority may redelegate settlement authority to a subordinate judge advocate or civilian attorney, in writing.

(c) *Appellate authority.* Upon appeal, a settlement authority has the same authority specified in § 842.128(a). The Judge Advocate General is the final appellate authority on subpart F type claims without right of further appeal to the Secretary of the Air Force. However, no appellate authority below The Judge Advocate General may deny an appeal of a claim it had previously denied.

(d) *Authority to reduce, withdraw, and restore settlement authority.* Any superior settlement authority may reduce, withdraw, or restore delegated authority.

(e) *Settlement negotiations.* A settlement authority may settle a claim filed in any amount for a sum within its delegated authority. Send unsettled claims in excess of the delegated authority to the level with settlement authority. Unsuccessful negotiations at one level do not bind higher authority.

### § 842.129 Settlement of claims against NAFIs.

(a) This subpart does not establish legal theories for adjudication of claims. Refer to the appropriate subpart to decide whether a claim is payable (e.g., subpart D for personnel claims; subpart K for tort claims), then use the rules in this subpart to decide the appropriate funds for payment of any approved claim.

(b) Claims arising from property damage to or loss from vehicles or loss of personal items stored in base MWR facilities will be evaluated under the normal rules applied by the appropriate subpart of this part, and paid using the rules in those subparts. Examples include recreational vehicles stored in authorized lots and used cars parked in onbase sales lots. One exception to this rule is the exclusion of personal items stolen from onbase gym lockers (discussed below).

(1) If a NAF fee has been charged in connection with the use of the storage

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location, a determination must be made on the nature of the fee charged. If the fee does no more than reimburse NAF costs in administering or maintaining the storage location, subpart O of this part applies in addition to other appropriate subparts. If the fee is set to generate a profit for the NAFI involved or if it is collected in accordance with the terms of an agreement, express or implied, under which the NAFI represents that it will provide some degree of security or safeguarding of the property, the claim will be paid with NAF funds.

(2) Normally, theft of items from gym lockers will be paid out of appropriated funds providing there is affirmative evidence of theft. Mysterious loss of property will not be paid and, in no case, will a claim be paid in excess of \$250.

### § 842.130 Payment of claims against NAFIs.

Substantiated claims against NAFIs must not be paid solely from appropriated funds. Claims are sent for payment as set out in this subpart. Do not delay paying a claimant because doubt exists whether to use appropriated funds or NAFs. Pay the claim initially from appropriated funds and decide the correct funding source later.

### § 842.131 Tort and tort type claims.

(a) *Claims within the scope of this subpart.* Claims which are within the scope of this subpart are those arising out of the operation of an MWR activity and are caused by:

(1) Civilian employees paid by a NAFI acting in the scope of their employment.

(2) Military personnel or appropriated fund civilian employees performing part-time duties for a NAFI for which a NAFI is paying.

(3) Negligent operation or condition of premises for which a NAFI is responsible.

(4) Members or authorized users of NAFI property. Such claims are subject to this subpart if the individual is a member of an MWR membership association or an authorized user of NAFI property and the use is in accord with applicable rules.