

Department of the Navy, DoD

§ 716.4

1002 of title 37 U.S.C. or any other provision of law. The term does not include:

(1) Work or study performed by a member of a Reserve component in connection with correspondence courses in which he is enrolled, or

(2) Attendance at an educational institution in an inactive status under the sponsorship of the Navy or Marine Corps.

[24 FR 7523, Sept. 16, 1959, as amended at 37 FR 6471, Mar. 30, 1972; 44 FR 25647, May 2, 1979]

§ 716.3 Special situations.

(a) *Service without pay.* Any member of a Reserve component who performs active duty, active duty for training, or inactive-duty training without pay shall, for purposes of a death gratuity payment, be considered as being entitled to basic pay, including special pay and incentive pay if appropriate, while performing such duties.

(b) *Death occurring while traveling to and from active duty for training and inactive-duty training.* Any member of a Reserve component who, when authorized or required by competent authority, assumes an obligation to perform active duty for training or inactive-duty training and who dies from an injury incurred on or after January 1, 1957 while proceeding directly to or directly from such active duty for training or inactive-duty training, shall be deemed to have been on active duty for training or inactive-duty training as the case may be.

(c) *Hospitalization.* A member of a Reserve component who suffers disability while on active duty, active duty for training, or inactive-duty training, and who is placed in a new status while he is receiving hospitalization or medical care (including out-patient care) for such disability, shall be deemed, for purposes of death gratuity payment to have continued on active duty, active duty for training, or inactive-duty training, as the case may be, in the event of his death in such status.

(d) *Discharge or release from a period of active duty.* A person who is discharged or released from active duty (other than for training) is considered to continue on that duty during the period of time required for that person to go to

his home by the most direct route. That period may not end before midnight of the day on which the member is discharged or released.

[24 FR 7523, Sept. 18, 1959, as amended at 25 FR 7792, Aug. 16, 1960]

§ 716.4 Eligible survivors.

(a) The death gratuity shall be paid to or for the living survivor or survivors of the deceased member first listed below:

(1) The lawful spouse. (For purpose of this part, a man or woman shall be considered to be the spouse if legally married to the member at the time of the member's death.)

(2) His children (without regard to their age or marital status) in equal shares.

(3) Parent(s), brother(s) or sister(s) or any combination of them, when designated by the deceased member.

(4) Undesignated parents in equal shares.

(5) Undesignated brothers and sisters in equal shares. In paragraphs (a)(2), (3) and (4), respectively, of this section, the terms "child" and "parent" have the meanings assigned to them by title 10 U.S.C. section 1477 and the term "parents" includes persons in loco parentis as indicated by that section. The terms "brother" and "sister" in paragraphs (a) (3) and (5) of this section include brothers and sisters of the half blood and those through adoption.

(b) *Designation of payee by service member.* Where the service member has designated a beneficiary and is not survived by a spouse, child, or children, the payment will be made to the specific person designated by him provided the designee falls within the class of beneficiaries permitted as set forth in paragraph (a)(3) of this section. If more than one person is so designated on the Record of Emergency, payment will be made in equal shares unless the member designated a proportionate share to each beneficiary. Frivolous designations, such as one per centum to a particular beneficiary, should not be made.

(c) *Death of survivor prior to receipt of gratuity.* (1) If a survivor dies before receiving payment, or if a designated beneficiary predeceases the member

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(and there is no other designated beneficiary) such amount shall be paid to the then living survivor or survivors listed first under paragraph (a) of this section.

(2) In case one of the beneficiaries (parents or brothers or sisters) designated by a member, pursuant to paragraph (a)(3) of this section, to receive death gratuity payment dies prior to the member's death, or after his death but prior to the time payment is made, the share which would have been paid to the deceased designee may be paid to the other person or persons designated.

[24 FR 7523, Sept. 18, 1959, as amended at 37 FR 6471, Mar. 30, 1972]

§716.5 Delegation of authority.

(a) Pursuant to the authority contained in title 10 U.S.C., section 1479, as to deaths described in section 1475 thereof, the Secretary of the Navy has delegated to commanding officers of naval commands, installations, or districts, with respect to naval personnel, and to Marine Corps commanding generals and officers in command of regiments, battalions or equivalent units and of separate or detached commands who have custody of service records, with respect to Marine Corps personnel, authority to certify for the payment of death gratuity the lawful spouse or designated beneficiary(ies) of the deceased service member who was residing with him at or near his place of duty at the time of his death, except in cases in which a doubt may exist as to the identity of the legal beneficiary. Disbursing officers are authorized to make payment of the death gratuity upon receipt of certification from the Commanding Officer.

(b) The Secretary of the Navy has delegated authority to the Chief of Naval Personnel as to naval personnel, and to the Commandant of the Marine Corps (Code MSPA-1) as to Marine Corps personnel, the authority to certify the beneficiary(ies) for receipt of payment of death gratuity in all appropriate cases of payment of death gratuity under the Servicemen's and Veterans' Survivor Benefits Act (now reenacted in 10 U.S.C. 1475-1480), including, but not limited to:

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(1) Cases in which a doubt may exist as to the identity of the legal beneficiary; and

(2) Cases in which the widow or designated beneficiary(ies) of the deceased service member was not residing with him at or near his place of duty at the time of his death.

[24 FR 7523, Sept. 18, 1959, as amended at 44 FR 25647, May 2, 1979]

§716.6 Death occurring after active service.

(a) Under title 10 U.S.C., section 1476, the death gratuity will be paid in any case where a member or former member dies on or after January 1, 1957, during the 120-day period which begins on the day following the date of his discharge or release from active duty, active duty for training, on inactive duty training, if the Administrator of Veterans' Affairs determines that:

(1) The decedent was discharged or released, as the case may be, from the service under conditions other than dishonorable from the last period of the duty or training performed; and

(2) Death resulted from disease or injury incurred or aggravated while on such active duty or active duty for training; or while performing authorized travel to or from such duty; or

(3) Death resulted from injury incurred or aggravated while on such inactive-duty training or while traveling directly to or from such duty or training.

(b) For purposes of computing the amount of the death gratuity in such instances, the deceased person shall be deemed to be entitled on the date of his death to basic pay (plus any special, incentive and proficiency pay) at the rate to which he was entitled on the last day he performed such active duty, active duty for training, or inactive duty training. A kind of special pay included is a pay increase under 10 U.S.C. 5540; see §716.1.

(c) The Department of the Navy is precluded from making payment of the death gratuity pending receipt of the determinations described in paragraph (a) of this section. In view of this, commands should insure that the medical records and reports of investigations by fact-finding bodies be submitted to the Navy Department at the earliest