

Department of the Navy, DoD

§ 755.9

action on the claim shall be communicated to the commanding officer who will take action consistent with the determination.

(c) *Charge against pay.* Where the amount does not exceed \$5,000.00, the amount ordered by the commanding officer shall, as provided in the Navy Comptroller Manual, be charged against the pay of the offenders and the amounts so collected will be paid to the claimant. Where the amount exceeds \$5,000.00, the claim, the investigation, and the commanding officer's recommendation shall be forwarded for review prior to checkage to Headquarters, U.S. Marine Corps (Code JAR) or the Judge Advocate General, as appropriate. The amount charged in any single month against the pay of offenders shall not exceed one-half of basic pay, as defined in paragraph 126h(2), Manual for Courts-Martial. The action of the commanding officer in ordering the assessment shall be conclusive on any disbursing officer for payment to the claimant of the damages assessed, approved, charged, and collected.

§ 755.7 Action where offenders are members of different commands.

(a) *Action by common superior.* The investigative report shall be forwarded to the common superior exercising general court-martial jurisdiction over the commands to which the alleged offenders are assigned. That officer shall ensure the alleged offenders are shown the investigative report and permitted to comment on it, should they desire, before action is taken on the claim. That officer shall review the investigation and determine whether the claim is properly within the provisions of Article 139, UCMJ, and these regulations, and whether the facts indicate responsibility for the damage on members of his command. If the claim is found payable under these regulations, he shall fix the amount to be assessed against the offenders and direct the appropriate commanding officers to take action accordingly.

(b) *Forwarding to SECNAV (JAG).* Where it is not practical or possible to carry out the procedure in § 755.7(a) of this section, the investigation or investigations shall be forwarded to the Sec-

retary of the Navy (Judge Advocate General) who will take action in the matter. Commanding officers, in such a situation, are not to make charges against the pay of their members until directed by the Secretary of the Navy (Judge Advocate General).

§ 755.8 Reconsideration and appeal.

(a) *Reconsideration.* The OEGCM may, upon a receipt of a request for reconsideration by either the claimant or a member who has been assessed pecuniary liability, reopen the investigation or take any other action he believes is necessary in the interests of justice. If the OEGCM contemplates acting favorably on the request, he will provide all individuals interested in the claim with notice and an opportunity to respond. The basis for any change will be noted in the OEGCM's decision.

(b) *Appeal.* In claims involving \$5,000.00 or less, a claimant or member who has been assessed pecuniary liability may appeal the decision to the OEGCM. An appeal must be submitted within 5 days of the receipt of the OEGCM's decision. Appeals will be forwarded, via the OEGCM, to the Judge Advocate General for review and final action. In the event of an appeal, the imposition of the OEGCM's decision will be held in abeyance pending the final action by JAG. If it appears that good cause exists that would make it impracticable for an appeal to be submitted within 5 days, the OEGCM may, in his discretion, grant an extension of time, as appropriate. His decision on extensions is final and nonappealable.

§ 755.9 Effect of court-martial proceedings.

Administrative action under these regulations is separate and distinct from and is not affected by any disciplinary action against the offender. The two proceedings are independent. Acquittal or conviction of the alleged offender by court-martial is evidence for the administrative action, but is not determinative on the issue of responsibility for damages under these regulations.