

## § 750.49

be filed by a proper beneficiary individually.

### § 750.49 Delegations of adjudicating authority.

(a) *Settlement Authority.* (1) The Secretary of the Navy may settle claims in any amount. The Secretary may pay the first \$100,000.00 and report the excess to the Comptroller General for payment under 31 U.S.C. 1304. See 10 U.S.C. 2733(d).

(2) The Judge Advocate General has delegated authority to settle claims for \$100,000.00 or less.

(3) The Deputy Judge Advocate General, the Assistant Judge Advocate General (General Law), and the Deputy Assistant Judge Advocate General (Claims and Tort Litigation) have delegated authority to settle claims for \$25,000.00 or less.

(4) Naval Legal Service Office commanding officers and the Officer in Charge, U.S. Sending State Office for Italy have delegated authority to settle claims for \$15,000.00 or less.

(5) Officers in charge of Naval Legal Service Office Detachments, when specifically designated by cognizant commanding officers of Naval Legal Service Offices; and the Claims Officer at the U.S. Naval Station, Panama Canal have delegated authority to settle claims for \$10,000.00 or less.

(6) Overseas commands with a Judge Advocate General's Corps officer or a judge advocate of the Marine Corps attached, have delegated authority to settle claims for \$5,000.00 or less.

(b) *Denial Authority.* (1) The Secretary of the Navy may deny a claim in any amount.

(2) The Judge Advocate General, the Deputy Judge Advocate General, the Assistant Judge Advocate General (General Law), and the Deputy Assistant Judge Advocate General (Claims and Tort Litigation) have delegated authority to deny claims in any amount.

(3) All other adjudicating authorities have delegated authority to deny claims only to the amount of their settlement authority.

(c) *Appellate Authority.* Adjudicating authorities have the same authority as delegated in paragraph b above to act upon appeals. No appellate authority below the Secretary of the Navy may

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deny an appeal of a claim it had previously denied.

### § 750.50 Advance payments.

(a) *Scope.* This paragraph applies exclusively to the payment of amounts not to exceed \$100,000.00 under 10 U.S.C. 2736 in advance of submission of a claim.

(b) *Statutory authority.* Title 10 U.S.C. 2736 authorizes the Secretary of the Navy or designee to pay an amount not in excess of \$100,000.00 in advance of the submission of a claim to or for any person, or the legal representative of any person, who was injured or killed, or whose property was damaged or lost, as the result of an accident for which allowance of a claim is authorized by law. Payment under this law is limited to that which would be payable under the MCA (10 U.S.C. 2733). Payment of an amount under this law is not an admission by the United States of liability for the accident concerned. Any amount so paid shall be deducted from any amount that may be allowed under any other provision of law to the person or his legal representative for injury, death, damage, or loss attributable to the accident concerned.

(c) *Officials with Authority to make Advance Payments.* (1) The Secretary of the Navy has authority to make advance payments up to \$100,000.00

(2) The Judge Advocate General has delegated authority to make advance payments up to \$100,000.00.

(3) The Deputy Assistant Judge Advocate General (Claims and Tort Litigation) has delegated authority to make advance payments up to \$25,000.00.

(4) Naval Legal Service Office commanding officers and the Officer in Charge, U.S. Sending State Office for Italy have delegated authority to make advance payments up to \$5,000.00.

(5) Officers in Charge of Naval Legal Service Office Detachments, when specifically designated by cognizant Commanding Officers of Naval Legal Service Offices; and the Staff Judge Advocate at the U.S. Naval Station, Panama Canal have delegated authority to make advance payments up to \$3,000.00.

(6) Overseas commands with a Judge Advocate General's Corps officer or a

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judge advocate of the Marine Corps attached, have delegated authority to make advance payments up to \$3,000.00.

(d) *Conditions for Advance Payments.* Prior to making an advance payment under 10 U.S.C. 2736, the adjudicating authority shall ascertain that:

(1) The injury, death, damage, or loss would be payable under the MCA (10 U.S.C. 2733);

(2) The payee, insofar as can be determined, would be a proper claimant, or is the spouse or next of kin of a proper claimant who is incapacitated;

(3) The provable damages are estimated to exceed the amount to be paid;

(4) There exists an immediate need of the person who suffered the injury, damage, or loss, or of his family, or of the family of a person who was killed, for food, clothing, shelter, medical, or burial expenses, or other necessities, and other resources for such expenses are not reasonably available;

(5) The prospective payee has signed a statement that it is understood that payment is not an admission by the Navy or the United States of liability for the accident concerned, and that the amount paid is not a gratuity but shall constitute an advance against and shall be deducted from any amount that may be allowed under any other provision of law to the person or his legal representative for injury, death, damage, or loss attributable to the accident concerned; and

(6) No payment under 10 U.S.C. 2736 may be made if the accident occurred in a foreign country in which the NATO Status of Forces Agreement (4 U.S.T. 1792, TIAS 2846) or other similar agreement is in effect and the injury, death, damage, or loss

(i) Was caused by a member or employee of the DON acting within the scope of employment or

(ii) Occurred "incident to noncombat activities" of the DON as defined in § 750.43.

### § 750.51 Final disposition.

(a) *Claimant to be notified.* The adjudicating authority shall notify the claimant, in writing, of the action taken on the claim.

(b) *Final denial.* A final denial, in whole or in part, of any MCA claim shall be in writing and sent to the

claimant, or his attorney or legal representative, by certified or registered mail, return receipt requested. The notification of denial shall include a statement of the reason or reasons for denial and that the claimant may appeal. The notification shall also inform the claimant:

(1) The title of the appellate authority who will act on the appeal and that the appeal will be addressed to the adjudicating authority who last acted on the claim.

(2) No form is prescribed for the appeal, but the grounds for appeal should be set forth fully.

(3) The appeal must be submitted within 30 days of receipt by the claimant of notice of action on the claim.

### § 750.52 Appeal.

(a) A claim which is disapproved in whole or in part may be appealed by the claimant at any time within 30 days after receipt of notification of disapproval. An appeal shall be in writing and state the grounds relied upon. An appeal is not an adversary proceeding and a hearing is not authorized; however, the claimant may obtain and submit any additional evidence or written argument for consideration by the appellate authority.

(b) Upon receipt, the adjudicating authority examines the appeal, determines whether the appeal complies with this regulation, and reviews the claims investigative file to ensure it is complete. The claim, with the complete investigative file and a memorandum of law, will be forwarded to the appellate authority for action. If the evidence in the file, including information submitted by the claimant with the appeal, indicates the appeal should be approved, the adjudicating authority may treat the appeal as a request for reconsideration.

(c) Processing of the appeal may be delayed pending further efforts by the adjudicating authority to settle the claim. Where the adjudicating authority does not reach a final agreement on an appealed claim, it shall send the entire claim file to the next higher settlement authority, who is the appellate authority for that claim.