

Claims Report

United States Army Claims Service

Personnel Claims Notes

Recovery Under the Point to Point POV Pilot Program

Currently, the military has two programs for shipping privately-owned vehicles (POVs). One is known as the Point to Point POV Pilot Program (P5).¹ Under this program, which began on 1 November 1994, a single contractor is responsible for POV shipments to and from Germany. It applies to approximately fifty percent of the POVs shipped between Germany and the continental United States (CONUS). The program covers all vehicles shipped between Germany and three locations in CONUS: St. Louis (Pontoon Beach, Illinois), Dallas, and Baltimore.

The second program is the one which was in existence prior to the P5. Under this program, the government may contract with a number of carriers to ship POVs to Germany, Hawaii, or other locations throughout the world. The simplest way to determine which of these programs was used to ship a vehicle is to look at the origin and destination. If the vehicle is being shipped between Germany and one of the three locations in CONUS listed above, the shipment is a "P5" shipment; otherwise, it is a "non-P5" shipment.

Recovery procedures for non-P5 shipments are well established.² Because of the number of carriers involved and the difficulty in assessing liability against a single carrier, however, the amount of recovery is often small. A policy note in the December 1994 edition of *The Army Lawyer* explains the recovery procedures for P5 shipments.³ Unfortunately, many field offices have experienced difficulties in these recovery actions. As a result, the U.S. Army Claims Service (USARCS) has directed all CONUS field claims offices to forward impasses in P5 recoveries directly to the Recovery Branch at the USARCS.⁴ European field claims offices should continue

to forward P5 recoveries to the U.S. Army Claims Service, Europe.⁵ This note looks at the problems encountered in P5 recovery actions and suggests approaches to dealing with them.

The contractor for the P5 contract, American Auto Carriers (AAC), frequently denies liability for loss and damage to POVs. Some of the grounds raised by the contractor are, in the view of the USARCS, unacceptable. When processing a P5 recovery action, field claims offices should carefully examine any grounds for denial which the contractor raises. Claims office personnel should be especially sensitive to the alleged grounds for denial in this note.

Uninspectable items. AAC sometimes denies liability for damage to the undercarriage and interior of POVs because these areas are "uninspectable." However, AAC's contract does not indicate any "uninspectable" areas of a POV.⁶ Field claims office personnel must make their own determinations as to whether damage claimed was preexisting or occurred during shipment. A blanket statement that an area of a vehicle is "uninspectable" will not relieve AAC of liability.

Failure to verify damages and use of the term "As Stated By Owner." AAC has denied liability for damage to POVs because an AAC employee wrote the words "disagree" or "as stated by owner" on the Department of Defense Form 788 (DD Form 788), Private Vehicle Shipping Document for Automobile, at destination. However, AAC's contract requires it to bring any disagreements to the attention of a contracting officer's representative, a government employee who is located at each vehicle processing center.⁷ Therefore, a notation by an AAC employee generally will not defeat AAC's liability. In addition, the term "As Stated By Owner" does not indicate that the AAC employee has disagreed with what the owner has written on the form. This term should not be interpreted to be a disagreement.⁸

1. See generally Lieutenant Colonel Philip L. Kennerly, *The Single Contractor Privately-Owned Vehicle Pilot Program*, ARMY LAW., Dec. 1994, at 46. Currently, the Military Traffic Management Command is planning to extend this pilot program to cover essentially all POV shipments worldwide. It is anticipated that this new global contract will begin on 1 November 1998.

2. U.S. DEP'T OF ARMY, REG. 27-20, LEGAL SERVICES, CLAIMS, para. 11-35 (1 Aug. 1995) [hereinafter AR 27-20]. See Robert Frezza, *Recovery on Privately Owned Vehicle Shipment Claims*, ARMY LAW., Oct. 1992, at 44.

3. See Kennerly, *supra* note 1, at 46.

4. Legal Automation Army-Wide System Bulletin Board Service Claims Forum Message # 444961, Pete Masterton, topic: Processing Offsets on P5 (POV) Claims (26 Aug. 1997).

5. AR 27-20, *supra* note 2, para. 11-35a(4).

6. Point to Point POV Pilot Program Contract, Statement of Work (1 Nov. 1994) [hereinafter P5 Contract] (copy on file with author). See Kennerly, *supra* note 1, at 48-51 (reproducing the claims provisions of the contract).

7. See P5 Contract, *supra* note 6, para. C.6.2.1.8, reproduced in Kennerly, *supra* note 1, at 49.

Mechanical defects. AAC has sometimes denied liability because damage is alleged to be a mechanical defect. AAC's contract indicates that it is not liable if it "can prove absence of fault or negligence, or that loss or damage arises out of causes beyond the contractor's control."⁹ Although this relieves AAC from liability for wear and tear and similar mechanical damage, it does not relieve it from liability for "mechanical damage" caused by shipment, such as a muffler which has been torn from a vehicle.

Catalog prices. In some cases, AAC has offered to pay reduced liability because it alleges that the repair estimates are inflated in comparison to catalog prices. The contract provides that AAC is liable for the full value of repairs.¹⁰ Field claims offices should fully investigate whether repair estimates are inflated. However, the fact that a repair estimate is higher than a catalog price quoted by AAC should not, in itself, relieve AAC of liability. This is especially true where catalog prices do not include the cost of labor to install a replacement part.

Preexisting damage. AAC sometimes denies liability because it alleges that the damage claimed was preexisting. In such circumstances, field claims personnel must carefully examine the damages noted on the origin DD Form 788 to determine if the damages were, in fact, preexisting. In addition, field claims personnel should inspect the vehicle and annotate their observations on the claims chronology sheet or a locally reproduced inspection sheet. It is especially important to note whether the claimed damage appears to be fresh and how this was determined (for example, fresh paint chips or lack of rust). AAC should be held responsible for damages which were not preexisting.

Depreciation. Sometimes, AAC has offered to pay reduced liability because it has taken depreciation on replacement parts in excess of what the local military claims office has taken. Field claims offices are required to depreciate replacement parts if they are ordinarily replaced during the useful life of a

vehicle (such as a muffler or tires).¹¹ AAC has sometimes offered less than the full amount demanded because it has taken depreciation deductions on items which are not ordinarily replaced during the useful life of a vehicle. Since AAC's contract provides that it is liable for the full value of repair,¹² this is improper.

Maximum amounts allowable. AAC has offered to pay reduced liability because it has applied the military's maximum amounts allowable. Military claims offices have maximum amounts which can be paid for certain items based upon the *Allowance List-Depreciation Guide*.¹³ AAC's contract does not contain any provision which permits it to rely on these same limitations in making its payment in response to a demand from a military claims office. Furthermore, such a limitation makes no sense, since the USARCS can waive the maximum amounts allowable.¹⁴

Scratches to bare metal. Because DD Form 788 indicates that "hairline" scratches which do not go to the bare metal should not be noted, AAC has sometimes alleged that it is not liable for such scratches. Field claims office personnel must make an independent determination of whether such scratches were caused by shipment. AAC's contract does not exclude liability for hairline scratches, unless AAC can prove that they were preexisting.¹⁵

Inability to inspect because of snow, dirt, or protective coating. In a few cases, AAC has denied liability because snow, dirt, or a new car protective coating prevented inspection at origin. In such cases, field claims office personnel should make an independent determination of whether damage was caused by shipment. If it was, AAC should be held responsible for the damage. AAC's contract requires it to ensure that a vehicle is clean at origin so that the inspection can be conducted.¹⁶ AAC's failure to do so does not relieve it of liability.

In order to be successful in P5 recovery actions, field offices must ensure that POV claims are properly adjudicated and well

8. Recently, AAC's subcontractor in Germany, Transcar, instructed its agents not to use the term "as stated by owner" on the DD Form 788. In addition, Transcar has reminded its agents of the responsibility to notify the contracting officer's representative if there is any disagreement, so that he or she can verify the damage. Letter, Transcar, Langer Kornweg 16, 65451 Kelsterbach, Germany, to all Transcar Offices, subject: Standardized Remarks DD Form 788 (10 Nov. 1997) (copy on file with author).

9. See P5 Contract, *supra* note 6, para. C.6.2.1.7, reproduced in Kennerly, *supra* note 1, at 49.

10. *Id.*

11. U.S. DEP'T OF ARMY, PAM. 27-162, LEGAL SERVICES, CLAIMS, para. 2-50a (15 Dec. 1989) [hereinafter DA PAM 27-162].

12. See P5 Contract, *supra* note 6, para. C.6.2.1.7, reproduced in Kennerly, *supra* note 1, at 49.

13. See AR 27-20, *supra* note 2, para. 11-14b; DA PAM 27-162, *supra* note 11, para. 2-35.

14. AR 27-20, *supra* note 2, para 11-14b.

15. See P5 Contract, *supra* note 6, para. C.6.2.1.7, reproduced in Kennerly, *supra* note 1, at 49 (providing that "the contractor assumes full liability for all loss and damage, except where the contractor can prove absence of fault or negligence, or that the loss or damage arises out of causes beyond the contractor's control."). The DD Form 788 indicates that scratches which do not go to bare metal should not be noted after the "initial inspection." This implies that AAC *should* note such scratches during the initial inspection at origin and, therefore, may not escape liability for new scratches noted at destination.

documented. Careful review of the DD Form 788 is vital. However, it is equally important for field claims personnel to conduct a well-documented inspection of the vehicle. It is especially important to indicate whether the claimed damage appeared to be caused by shipment and, if so, the reasons for that conclusion.

Field claims office personnel should carefully scrutinize all denials of liability by carriers during the recovery process. This is especially important in the case of P5 claims. Lieutenant Colonel Masterton.

Policy Changes to be Published in New Regulation

Introduction

The U.S. Army Claims Service (USARCS) is currently working on several important changes in personnel claims policy. These changes will be published in the new versions of *Army Regulation 27-20*¹⁷ and *Department of the Army Pamphlet 27-162*.¹⁸ Both of these publications will be issued soon and will have the same effective date. This note describes three of the most important changes in personnel claims policy in the new claims regulation and pamphlet. These changes will affect the rules on vehicle vandalism, requests for reconsideration, and waiver of maximum amounts allowable.

16. *Id.* para. C.5.1.7.

[T]he contractor will insure that the POV is clean and free of road tar and dirt and able to be accurately inspected. When the condition of the POV impairs the DD Form 788 or commercial equivalent inspection process, the contractor shall . . . request the customer to clean the POV prior to processing.

17. AR 27-20, *supra* note 2.

18. DA PAM 27-162, *supra* note 11.

19. AR 27-20, *supra* note 2, para. 11-5e(3). This provision superseded the provision on vehicle vandalism contained in *DA Pam 27-162*, paragraph 2-29c, which is currently incorrect. The current regulatory provision also permits payment for vehicle vandalism and theft if the incident occurs when the vehicle is used in the performance of military duty, when the vehicle is being shipped, and when the vehicle is located in an area on the installation where the command has assumed responsibility for security. *Id.* paras. 11-5e(1), (2), (4).

20. The regulation defines quarters for these purposes as:

(1) Quarters, wherever situated, which are assigned to the claimant or otherwise provided in kind by the Government; (2) Quarters outside the United States, which are occupied by the claimant in compliance with competent authority but are neither assigned to the claimant nor otherwise provided in kind by the Government; or (3) Any place of lodging wherever situated, such as a hotel, motel, guest house, transit billet, or other place, when occupied by the claimant while in the performance of temporary duty or similar authorized military assignment of a temporary nature.

Id. para. 11-5. The regulation does not permit payment for losses at off-post quarters (in other words, quarters not provided in kind by the government) in the United States because the Personnel Claims Act prohibits payment of a claim if the loss occurred "at quarters occupied by the claimant in a State or in the District of Columbia that were not assigned or provided in kind by [the government] . . ." 31 U.S.C. § 3721e (1994).

21. See AR 27-20, *supra* note 2, para. 11-5e(5) (allowing payment for vehicle damage "other than at quarters on a military installation" only if it is caused by fire, flood, hurricane, or other unusual occurrence; theft and vandalism damage is specifically excluded).

22. See app. A, *infra*. This appendix shows the portions of the current regulation and pamphlet which have been eliminated (printed in crossed out text) and the new provisions which have been added (printed in bold text). The new regulation and pamphlet will not contain this detail.

23. The new provision will provide that losses at off-post quarters are compensable if they did not occur within a state or the District of Columbia. This should make it clear that vehicle vandalism and other compensable losses at off-post quarters are payable in territories of the United States, such as Puerto Rico.

Vehicle Vandalism

The new claims regulation and pamphlet will significantly expand the authority to pay for vehicle vandalism and theft. The new rules will permit payment for vehicle theft and vandalism which occurs anywhere on post and, in certain circumstances, off post. The new vehicle theft and vandalism rules are *not* retroactive. They will apply only to incidents which occur on or after the effective date of the new regulation and pamphlet.

Currently, a personnel claim for vandalism or theft of a privately-owned vehicle is generally only payable if the damage or loss occurs at "quarters."¹⁹ For these purposes, "quarters" include on-post quarters in the United States and both on-post and off-post quarters outside of the United States.²⁰ The current regulation does not permit payment for vehicle theft and vandalism which occurs at other locations on an installation.²¹

Under the new regulation,²² vandalism or theft of a privately-owned vehicle will be compensable if it occurs *anywhere* on post or at off-post quarters overseas.²³ Theft or vandalism will be presumed to have occurred off post and, therefore, will not be compensable.²⁴ The claimant will be required to rebut this presumption with clear and convincing

evidence that the theft or vandalism occurred on post or at overseas quarters. A claimant's uncorroborated statement will not be enough to rebut the presumption. Instead, the regulation will require a statement from a disinterested third party, such as a statement in the military police report that broken glass was found next to the vehicle or a statement from a disinterested third party who saw the claimant's vehicle and several others vandalized in a like manner.

In addition, vehicle theft or vandalism which occurs off post will be compensable under the new regulation if there is a clear connection between the vandalism and the claimant's duties. However, such theft or vandalism is not compensable if it occurs at off-post quarters in the fifty states or the District of Columbia.²⁵ For off-post vehicle theft or vandalism to be payable, there must be clear evidence which establishes the connection between the claimant's duties and the damage. For example, if the claimant's vehicle is spray painted with the phrase "soldiers kill babies," there is a direct connection to the soldier's duties, and the claim could be paid. On the other hand, if a rock is thrown from an overpass and breaks the claimant's windshield, the claim is not payable because there is no clear connection to duty.

Requests for Reconsideration

The new claims regulation and pamphlet will give staff judge advocates (SJAs) significantly expanded authority to take final action on requests for reconsideration. The new provisions will give SJAs the authority to take final action on most requests for reconsideration which involve \$1000 or less.

A request for reconsideration is the only possible type of appeal of a personnel claim.²⁶ Currently, only the USARCS commander can take final action on most requests for reconsideration.²⁷ The head of an area claims office, who is generally an SJA,²⁸ can take final action on requests for reconsideration only when the claimant is fully satisfied by the SJA's action.²⁹

Under the new regulation and pamphlet,³⁰ an SJA may still take final action on a request for reconsideration if the claimant is fully satisfied. However, an SJA may also take final action if: (1) the reconsideration request does not contain new facts or a new legal basis, (2) the request was not timely, or (3) the total amount in dispute does not exceed \$1000.

The provision permitting SJAs to take final action on reconsideration requests which state no new facts or legal bases was designed to eliminate the need to forward vague requests to the USARCS. Under this provision, an SJA could take final action on a vague request consisting solely of the statement "I request reconsideration" written on a settlement letter. In deciding whether reconsideration requests contain new facts or new legal bases, SJAs should interpret the requests liberally. If there is any argument that the request states new facts or a new legal basis, the SJA should forward the request to the USARCS or rely on a different provision which permits final action by the SJA.

The provision which permits SJAs to take final action on untimely reconsideration requests should only be used if the claimant has no legitimate reason for submitting the request after the sixty-day time frame has elapsed.³¹ If the claimant has any explanation for submitting a late request, the SJA should forward the request to the USARCS or rely on a different provision for taking final action.³²

24. The current regulation contains the same presumption. See AR 27-20, *supra* note 2, para. 11-5e(3). However, the new regulation will make it plain that the burden of proof is clear and convincing evidence and that the uncorroborated statement of the claimant is not enough to overcome the presumption.

25. As mentioned in note 20, *supra*, the Personnel Claims Act does not permit payment for incidents occurring within the 50 states and the District of Columbia at quarters that were "not assigned or provided in kind by [the government]" 31 U.S.C. § 3721e (1994).

26. The Personnel Claims Act provides that "settlement of a claim under this section is final and conclusive," meaning that an agency's administrative determination may not be appealed to the courts. *Id.* § 3721k.

27. AR 27-20, *supra* note 2, para. 11-20b. As an exception, the Commander, U.S. Army Claims Service, Europe, may take final action on any request for reconsideration forwarded there by a subordinate office, as long as it does not involve waiving a maximum allowance. *Id.* para. 11-20b(4).

28. *Id.* para. 1-5d (defining "area claims offices" as those offices under the supervision of a senior judge advocate which are designated by the USARCS commander). The senior judge advocate, who is usually an SJA, is the head of the area claims office. *Id.* para. 1-5d(1).

29. *Id.* para. 11-20b(4). This paragraph requires that a request for reconsideration be forwarded to the USARCS if the claimant does not wish to accept an additional payment as full relief. Therefore, a field claims office can take final action only if the claimant is fully satisfied with the additional payment. Technically, this final action can be taken by any "settlement" authority (which generally means any claims attorney who can pay personnel claims) or the "denial" authority (the head of an area claims office, generally an SJA). See *id.* paras. 1-5f, 11-20b(4).

30. See app. B, *infra*.

31. The time frame for submitting a reconsideration request has not changed. See AR 27-20, *supra* note 2, para. 11-20c.

32. Waivers of the sixty-day time limitation should be granted liberally, unless the claimant's delay has prejudiced the government's right to recover. See Personnel Claims Note, *Requests for Reconsideration*, ARMY LAW., Aug. 1997, at 46.

The most important of the new reconsideration rules is the provision which permits SJAs to take final action on requests for reconsideration in which the amount in dispute is \$1000 or less. This will undoubtedly apply to a large number of reconsideration requests.³³ To determine the amount in dispute, SJAs should subtract the amount of any additional payment from the amount requested by the claimant in the request for reconsideration. For example, if a claimant requests an additional \$1200 for a damaged couch and the claims office pays an additional \$400, the amount in dispute is only \$800. Do not consider amounts claimed for any items the claimant withdraws from reconsideration or for which the claimant accepts an additional payment as full satisfaction. If the request does not contain a specific amount, look to the amounts requested in the original claim for items mentioned in the request. If in doubt as to the amount, the SJA should forward the request to the USARCS or rely on some other provision for taking final action.

If none of the above provisions apply, the SJA must forward the request for reconsideration to the USARCS.³⁴ Even if one of the provisions for taking final action applies, an SJA must forward a request for reconsideration to the USARCS if: (1) the SJA personally acted on the claim and believes the request should be denied or (2) the request involves a question of policy or practice that the SJA believes is appropriate for resolution by the USARCS. Since the SJA is the only person who can deny personnel claims, the first exception will apply to most requests for reconsideration in which the original claim was completely denied.³⁵ The second exception is designed to enable the USARCS to provide policy guidance to field offices when novel situations arise.

Only an SJA or higher authority can take final action on reconsideration requests. The authority to act on reconsideration requests is personal to the SJA (or the acting SJA) and may not be delegated.³⁶ When taking final action on a reconsideration request, the SJA should personally sign the action. Similarly, when forwarding a reconsideration request to the USARCS, the SJA must personally sign the forwarding memo-

randum or endorsement and must recommend a specific action to be taken on the request.

Maximum Amounts Allowable

The new claims regulation and pamphlet will significantly expand the authority of SJAs to waive maximum amounts allowable. The *Allowance List Depreciation Guide* establishes maximum amounts which may be paid for specific categories of property.³⁷ For example, the maximum which may be paid for a vehicle damaged during shipment is \$20,000.³⁸ Under the current regulation, only the USARCS may waive a maximum amount allowable.³⁹ Under the new regulation and pamphlet,⁴⁰ an SJA may waive a maximum amount allowable. Before doing so, however, the SJA must determine that there is good cause and that the claimant has established four factors by clear and convincing evidence: (1) the property was not held for commercial purposes, (2) the claimant owned the property, (3) the property had the value claimed, and (4) the property was damaged or lost in the manner alleged.

Good cause for waiving the maximum amount allowable should be interpreted liberally. There is no need to prove that there was an injustice because government officials misinformed the claimant about coverage under the Personnel Claims Act or because the claimant was unable to obtain insurance protection, as was previously required.⁴¹ Under the new regulation, an economic loss is sufficient to establish "good cause," as long as the claimant establishes the four factors described above by clear and convincing evidence.

The first factor, that the property was not held for business purposes, can usually be assumed, absent evidence to the contrary. The second factor, ownership, can be proven by purchase receipts, photographs, or statements by others who observed the property in the claimant's possession. The third factor, value, is generally established by purchase receipts, appraisals obtained before the loss, or similar evidence; a statement from the claimant or a friend of the claimant is not sufficient. The

33. An informal study conducted by the Personnel Claims and Recovery Division, USARCS, indicated that approximately half of all requests for reconsideration involve disputes of \$1000 or less.

34. If the claim arose from an office subordinate to the Commander, U.S. Army Claims Service, Europe, the request should be forwarded to that office for final action.

35. AR 27-20, *supra* note 2, para. 1-5f.

36. This authority may devolve to an acting SJA in the absence of the SJA.

37. See ALLOWANCE LIST DEPRECIATION GUIDE (15 Apr. 1995) [hereinafter DEPRECIATION GUIDE] (copy on file with author); AR 27-20, *supra* note 2, para. 11-12.

38. DEPRECIATION GUIDE, *supra* note 37, item 7.

39. AR 27-20, *supra* note 2, para. 11-14b (providing that the Chief, Personnel Claims and Recovery Division, may waive the maximum in a particular case for good cause shown).

40. See app. C, *infra*.

41. DA PAM 27-162, *supra* note 11, para. 2-35b.

fourth factor, loss or damage, can be proven by an inventory, if the loss was shipment related; however, a generic reference on the inventory may be insufficient. For example, if an inventory lists a rug, this will not be sufficient to establish that a \$4000 Turkish rug was lost.

Only the SJA may waive maximum amounts allowable. This authority is personal to the SJA (or the acting SJA) and may not be delegated. The SJA must personally sign a memorandum which attests to the four required factors.

Conclusion

The new provisions discussed in this note are a significant departure from current policy. Field claims office personnel

must be familiar with these new rules and must implement them properly. The new rules give SJAs much greater authority to act on personnel claims. With the new authority, however, come new responsibilities. Previously, the USARCS retained the power to act on requests for reconsideration and to waive maximum amounts allowable, in order to ensure that personnel claims were adjudicated uniformly and fairly throughout the Army. Field claims personnel and SJAs now have the task of ensuring that these claims are uniformly and fairly adjudicated. Field claims personnel must carefully monitor the claims forum of the Legal Automation Army Wide System bulletin board system, *The Army Lawyer*, and other sources of claims information to ensure that the new authority is exercised properly. Lieutenant Colonel Masterton.

Appendix A

Changes to Vandalism Provisions

Additions to the current version are in **bold**.

Deletions from the current version are ~~crossed out~~

SUMMARY OF CHANGE: Expands authority to pay for vehicle vandalism claims, permitting compensation for all vandalism on post, rather than limiting compensation to vandalism at quarters. Retains current requirement for extrinsic evidence of location of vandalism. Permits payment of vandalism claims off post where there is a nexus to claimant's service.

TEXT OF CHANGE:

Change para. 11-5a(2), *Army Regulation 27-20 (AR 27-20)* as follows (this will be renumbered para. 11-5d(2)):

(2) Quarters **not located in a state or the District of Columbia** ~~outside the United States~~, which are occupied by the claimant in compliance with competent authority but are neither assigned to the claimant nor otherwise provided in kind by the Government. However, a claim is not cognizable when the claimant is:

(a) A civilian employee who is a local inhabitant.

(b) A U.S. citizen hired as a civilian employee while residing abroad or after moving to a foreign country as a part of the household of a person who is not a proper party claimant

(c) A family member **not residing in a state or the District of Columbia** ~~outside the United States~~ while the soldier is stationed in a different country.

(d) A local inhabitant of a U.S. territory who is in that territory at the time of a loss when he or she is in the ARNG either on Full Time-National Guard Duty (FTNGD) or on active duty under Title 10, or in the USAR on active duty for any reason.

Change para. 11-5e(3), *AR 27-20* as follows (this will be renumbered para. 11-5h(3)):

(3) Located at quarters or place of lodging, as defined in paragraphs a(1) ~~d(1)~~, (2), and (3) above, ~~which for purposes of this paragraph includes garages, carports, driveways, assigned parking spaces, and lots specifically provided and used for the purpose of parking at one's quarters or located on a military installation, provided that the loss or damage is caused by fire, flood, hurricane, or other unusual occurrence, or by theft or vandalism. For the purposes of this paragraph, the term "quarters" includes garages, carports, driveways, assigned parking spaces, and lots specifically provided and used for the purpose of parking at one's quarters or other areas normally used for parking while at quarters by the claimant and other occupants of the claimant's building, or by the claimant's neighbors. The term "military installation" is used broadly to describe any fixed land area, wherever situated, controlled and used by military activities or the DOD. For this category, there is a presumption that vehicle theft or vandalism occurs off the military installation does not occur on the military installation or at quarters and is generally not compensable. Claims for theft or vandalism to vehicles (including property located inside a vehicle) are only payable when a claimant proves that the theft or vandalism occurred while the vehicle was on the military installation or at his or her authorized or assigned quarters (for example: a military police report indicates broken glass from the window is on the driveway was found at the on-post parking lot where the vehicle was vandalized). A vehicle that is properly on the installation or at quarters should be presumed to be incident to service unless such a presumption would be unreasonable under the particular circumstances, such as visiting a fellow soldier on another installation while on leave.~~

Change para. 11-5e(5), *AR 27-20* as follows (this will be renumbered para. 11-5h(5)):

(5) ~~Located other than at quarters on a military installation, provided that the loss or damage is caused by fire, flood, hurricane, or other unusual occurrence. Theft or vandalism are excluded. The term "military installation" is used broadly to describe any fixed land area, wherever situated, controlled, and used by military activities or the DOD. A vehicle that is properly on the installation should be presumed to be incident to the claimant's service unless the application of such a presumption would be unreasonable under the particular circumstances, such as visiting a fellow soldier on another military installation while on leave. Located off the military installation when the loss or damage is directly connected to the claimant's service, provided the incident does not occur at quarters in a state or the district of Columbia that were not assigned or provided in kind by the government.~~

Add the following after the above paragraph (this will be numbered para. 11-5h(6), *AR 27-20*):

(6) **To the extent the provisions of this paragraph make vehicle loss claims payable, when they would not be payable under previous policy, such claims will be considered for payment only if the loss occurred after the effective date of this regulation.**

Add the following after para. 2-29c(2), *Department of the Army Pamphlet 27-162 (DA Pam 27-162)* (Because of a complete reorganization of the pamphlet, which will enable its provisions to be numbered in the same manner as the regulation, this paragraph will be renumbered para. 11-5h(3)(c)):

(c) **Standard of proof for vandalism and theft claims.** In the case of vandalism and theft, the claimant must be able to show that the vandalism or theft occurred at quarters or on the military installation by clear and convincing evidence. There is a presumption that vehicle theft or vandalism did not occur at quarters or on the military installation and, therefore, is not compensable. The claimant must rebut this presumption with clear and convincing extrinsic evidence. An MP report that corroborates that broken glass from the claimant's vehicle was found on the parking lot outside the claimant's place of duty will be sufficient to rebut this presumption. Similarly, a statement by a disinterested third party who saw that the claimant's vehicle and a number of other vehicles parked near it in the PX parking lot were vandalized in a like manner will be sufficient to rebut this presumption. However, the claimant's uncorroborated statement that a vehicle was vandalized on the military installation or at quarters will not be sufficient.

Add the following after the above paragraph (this paragraph will be renumbered para. 11-5h(4), *DA Pam 27-162*):

(4) **Vehicles not located on the installation or at quarters.** Theft or vandalism involving vehicles which are not located on the installation or at quarters, as defined above, may be compensable if the claimant can establish that these acts occurred incident to service. A claimant must establish a clear connection between the theft or vandalism and the claimant's duties supporting a conclusion that the damage occurred directly incident to the claimant's service. Damage caused by random acts of vandalism or theft that occur off-post are not compensable. This risk should be covered by private insurance. The use of a vehicle off the military installation for commuting to or from work does not make the use incident to service for purposes of this paragraph. If a rock is thrown from an off-post overpass and breaks a claimant's car windshield while he is driving to work, the damage is not incident to service and is not compensable. If a soldier's vehicle bearing a military sticker is spray painted at an off-post location with the phrase "soldiers kill babies," there is a direct connection between the claimant's service and the damage; therefore, a claim for such damage could be paid. Off-post theft or vandalism which occurs at economy quarters in a state or the District of Columbia is not compensable, even if it is incident to service as defined in this subparagraph. The Personnel Claims Act specifically prohibits compensation for damages incurred at off-post quarters in a State or the District of Columbia.

Appendix B

Change to Reconsideration Provisions

Additions to the current version are in **bold**.
Deletions from the current version are ~~crossed out~~.

SUMMARY OF CHANGE: Gives SJAs authority to act on certain reconsideration requests.

TEXT OF CHANGE:

Replace para. 11-20b(3), *AR 27-20*, with the following:

(3) If the approval or settlement authority cannot take final action on the request (see para. c below), he or she will issue any offered payment and will forward the claim through any intervening approval or settlement authorities to the official authorized to take final action on the request.

Delete para. 11-20b(4), *AR 27-20*.

Add the following after para. 11-20b, *AR 27-20*:

An approval or settlement authority:

c. May take final action on a request for reconsideration if the action taken on reconsideration results in the acceptance by the claimant as full relief on the claim.

d. May take final action on a request for reconsideration if he or she is the head of an area claims office or higher settlement authority and –

1. The reconsideration request does not contain new facts or legal basis for requesting reconsideration.

2. There was no timely request for reconsideration and no exceptional circumstances are present.

3. The total amount in dispute after the settlement or approval authority has acted on the request for reconsideration does not exceed \$1000.

e. Will forward to USARCS for action a request for reconsideration which does not meet any of the above criteria or which—

1. Involves a claim on which the head of an area claims office or higher settlement authority has personally acted, where that individual believes the request for reconsideration should be denied.

2. Involves a question of policy or practice that the head of an area claims office or higher settlement authority believes is appropriate for resolution by USARCS.

f. As an exception, the Chief, U.S. Army Claims Service, Europe (USACSEUR), may take final action on any reconsideration request forwarded there by a subordinate office. The Chief, USACSEUR, will include a complete copy of the final action and will forward the file to the Commander, USARCS.

g. The authority to take final action on reconsideration requests is personal to the head of the area claims office and may not be delegated.

h. Prior to forwarding a request for reconsideration, the settlement or approval authority must notify the claimant, in writing, of the action he or she has taken.

Change para. 11-20c, *AR 27-20*, as follows (this material will be placed at the beginning of para. 11-20):

c. A claimant has 60 days from the settlement date of the claim to request reconsideration. The head of an area claims office may waive this time period in exceptional cases. The claimant will receive written notification of this time limit as part of the notice of action on the claim. Any reconsideration where denial is recommended because it was not timely filed will be forwarded according to paragraph (b)4 above. The Chief, Personnel Claims and Recovery Division may grant relief on untimely requests for reconsideration on the basis of substantial new evidence, fraud, mistake of law, or mathematical miscalculation. In appropriate situations, he or she may deny relief if the filing delay precluded acquiring additional facts.

Change para. 2-59b, *DA Pam 27-162* as follows (this paragraph will be renumbered para. 11-20g(2)):

(g) (2) Action by the original approval or settlement authority. The original approval or settlement authority may ~~take action if he or she determines that the original action taken should be modified.~~ **modify the original action, if he or she believes this to be appropriate. A settlement or approval authority may take final action on a request for reconsideration if the action taken results in the claimant's acceptance as full relief on the claim. In addition, the head of an area claims office (typically a SJA) or higher settlement authority may take final action on a request for reconsideration if :**

- (a) The action taken on reconsideration results in the claimant's acceptance as full relief on the claim.
- (b) The reconsideration request does not contain new facts or legal basis for requesting reconsideration.
- (c) There was no timely request for reconsideration and no exceptional circumstances are present.

(d) The total amount in dispute after the settlement or approval authority has acted on the request for reconsideration does not exceed \$1,000. The amount in dispute is the difference between the amount requested by the claimant in the request for reconsideration and the amount granted by the settlement or approval authority in response to the request for reconsideration, after deducting:

•The amount claimed in the request for items which the claimant voluntarily withdraws from reconsideration, after receiving an explanation for the partial payment or nonpayment, or for any other reason.

•The amount claimed in the request for items where the claimant accepts the amount offered in full relief for the damage or loss.

If the request for reconsideration does not contain a request for a specific amount, the amount requested by the claimant will be considered to be the amount requested in the original claim for the items included in the request for reconsideration. If there is a question as to the amount in dispute, err on the side of determining that the amount is over \$1,000 and forward the request.

Add the following paragraph after the above paragraph (this will be numbered para. 11-20g(3), *DA Pam 27-162*):

(3) Forwarding the request for reconsideration. The head of an area claims office must forward a request for reconsideration to USARCS or U.S. Army Claims Service, Europe (USACSEUR) for final action if it—

- (a) Does not meet the criteria in subparagraphs (g)(2)(a) through (d) above;
- (b) Involves a claim on which the head of an area claims office has personally acted, where that individual believes the request for reconsideration should be denied; or
- (c) involves a question of policy or practice that the head of an area claims office believes is appropriate for resolution by USARCS or USACSEUR.

Change para. 2-59d, *DA Pam 27-162* as follows (this paragraph will be renumbered para. 11-20g(5)):

(5) Procedure. ~~Each~~ **The settlement or approval authority must act on the request personally; this authority may not be delegated. If additional payment is made, the chronology sheet and other documents in the file must reflect the basis for it. If the settlement authority grants a request for reconsideration, in part but not in full, additional payment should be made; he or she must then forward the file, along with a personnel claims memorandum of opinion, through any intervening settlement authority to USARCS (in Europe, to USACSEUR) for final action. The settlement or approval authority should notify the claimant in writing of the action taken on the request for reconsideration. If the action taken on the request modifies the original action, the settlement or approval authority should make any additional payment involved and determine if the modification satisfies the claimant. The settlement or approval authority should forward appropriate claims files and personnel claims memoranda of opinion to the head of the area claims office. The head of the area claims office may take final action on a request for reconsideration according to the criteria set forth above; this authority may not be delegated. If the request must be forwarded to USARCS or USACSEUR, the outside cover of the file must be clearly marked "RECONSIDERATION." The claimant should be told that the claim has been forwarded, but not what action the claims office has should not be told what was recommended. A head of the area claims office settlement authority may concur in a previous memorandum of opinion or may attach a supplemental memorandum. When a request for reconsideration is forwarded to USARCS or USACSEUR for final action, the file should contain a memorandum or endorsement personally signed by the head of the area claims office. This memorandum or endorsement must contain, at a minimum, a specific recommendation on the request for reconsideration. For example, a claimant at Fort Sill puts in a written request for reconsideration of the amount paid on a table, contending that the amount awarded will not cover the cost of repair. The claimant requests payment of an additional \$150. Claims personnel discuss the matter and allow the claimant 14 days to get a second estimate of repair. After reviewing the second estimate, the CJA or claims attorney pays the claimant an additional \$100 and forwards the file with a personnel claims memorandum of opinion through the SJA (or Acting SJA), who concurs, to USARCS, recommending that no further payment be made. The CJA or claims attorney should notify the claimant in writing of the action taken and determine if he or she is satisfied. If the claimant is not satisfied, the CJA or claims attorney should forward the file with a personnel claims memorandum of opinion to the head of the area claims office. The head of the area claims office may take final action on the request for reconsideration or forward the claim to USARCS if he or she believes the request involves an issue of policy which is appropriate for resolution by USARCS. If the head of the area claims office forwards the claim to USARCS, he or she may prepare a new personnel claims memorandum of opinion or an endorsement concurring in the previous memorandum of opinion. In either case, the memorandum or endorsement must be personally signed by the head of the area claims office and recommend a specific action to be taken on the request for reconsideration.**

Appendix C

Change in Waiver of Maximum Allowables

Additions to the current version are in **bold**.
Deletions from the current version are ~~crossed out~~.

SUMMARY OF CHANGE: Gives SJA authority to waive maximum allowables.

TEXT OF CHANGE:

Change the second sentence of para. 1-5f, *AR 27-20*, to read as follows:

The authority to act upon appeals or requests for reconsideration, **to waive maximum allowables**, to disapprove claims (including disapprovals based on substantial fraud), or to make final offers will not be delegated.

Add the following after the last sentence of para. 11-14b, *AR 27-20*:

In addition, the head of an area claims office, or higher settlement authority, may waive the maximum in a particular case for good cause if the claimant establishes the elements in subparagraph (1) through (4) below. The head of the area claims office must personally certify this by including a memorandum in the claims file providing a written explanation detailing the facts relied upon which constituted good cause and detailing how the claimant has established each one of the four elements below by clear and convincing evidence. This authority is non-delegable and must be exercised personally by the head of the area claims office. The elements which must be established are—

- (1) The property was not held for use in a business or for commercial purposes.**
- (2) The property was actually owned by the claimant.**
- (3) The property had the value claimed.**
- (4) The property was damaged or lost in the manner alleged.**

Replace para. 2-35b, *DA Pam 27-162*, with the following (this paragraph will be renumbered para. 11-14a(2)):

(2) Waiver of maximum allowances. The head of an area claims office, or a higher settlement authority, may waive the maximum allowable for good cause in certain situations. Before doing so, the settlement authority must personally sign a written memorandum for the file including—

- a. The facts establishing good cause.**
- b. An explanation of how the claimant has established the following four factors by clear and convincing evidence:**
 - 1. The property was not held for use in a business or for commercial purposes.**
 - 2. The property was actually owned by the claimant. For lost or stolen items this is generally established by purchase receipts or statements by others who observed the property in the claimant's possession.**
 - 3. The property had the value claimed. This is generally established by a purchase receipt, appraisal obtained before the loss, or similar evidence. A statement by the claimant or a relative, friend, or acquaintance of the claimant is not sufficient to establish the alleged value.**
 - 4. The property was damaged or lost in the manner alleged. In a claim for loss during a government shipment, the fact that the property was lost during shipment is generally established by showing that the property was clearly identified on the inventory. However, a generic reference on the inventory may be insufficient. For example, if the inventory simply lists four rugs, this will not be sufficient to establish shipment of four handmade wool Turkish rugs that cost \$4,000 each.**