

Claims Report

United States Army Claims Service

Personnel Claims Notes

Requests for Reconsideration

Requests for reconsideration of personnel claims are important actions. Often, they involve difficult personnel claims issues and a great deal of money. Claims personnel may be required to draft a seven paragraph memorandum and may need to forward the request through the local staff judge advocate to the Commander, U.S. Army Claims Service (USARCS) for final action. Because of the importance of the requests and the amount of work involved, it is critical to process these actions properly. This note discusses some of the problems frequently encountered in processing requests for reconsideration.

A claims judge advocate may always reconsider his action on a personnel claim if he makes a mistake.¹ However, he *must* reconsider the action if the claimant, or someone acting on behalf of the claimant, submits a written request for reconsideration which clearly states the factual or legal basis for relief.² Only written requests for reconsideration should be forwarded through the staff judge advocate to the USARCS for final action.³ Oral requests for reconsideration should not be forwarded, and written submissions should not be forwarded if they do not include a specific written request for reconsideration. For example, if a claimant orally requests reconsideration and submits an additional repair estimate which purportedly substantiates the request, the request should not be forwarded. Claims personnel should tell the claimant that only a written, signed, request for reconsideration which identifies the items at issue will be considered by higher authority.

A claimant has only sixty days from the date a claim is settled to request reconsideration.⁴ Staff judge advocates may waive this time period in exceptional cases,⁵ and waivers should be granted liberally, as long as the government's recovery rights are not prejudiced. For example, the staff judge advocate should waive the sixty-day time limit, even if the claimant's excuse for the delay is weak, if a claimant requests reconsideration seventy days after the settlement date, and either: (1) the recovery action against the carrier has not been completed, or (2) no recovery action is possible (as is usually the case in claims for damages caused by fire, flood, hurricane, or other unusual occurrences). In this situation, difficulty in obtaining additional estimates would be an adequate excuse for the delay. On the other hand, if recovery action is already complete, the staff judge advocate should waive the sixty-day time limit only if the claimant has a compelling excuse for the delay, such as the claimant's hospitalization or temporary duty for a significant part of the sixty-day period.⁶

A claims judge advocate may take final action on a written request for reconsideration only if the judge advocate properly advises the claimant of the reconsideration process and the claimant is completely satisfied with the action taken.⁷ For example, if a claimant requests reconsideration and asks for an additional \$100 for a damaged couch, the claims judge advocate may take final action on the request by paying the claimant an additional \$50, as long as the claimant is satisfied with this payment and is advised of all of her rights, including the right to have the request forwarded to the USARCS for final action. Claims judge advocates should always contact a claimant who has requested reconsideration and determine whether the claim-

1. U.S. DEP'T OF ARMY, REG. 27-20, LEGAL SERVICES, CLAIMS, para. 11-20a (1 Aug. 1995) [hereinafter AR 27-20]. This paragraph states that a settlement or approval authority may reconsider his or her action if the original action was in error or is incorrect based on new facts. The head of an area claims office (typically a staff judge advocate) has the authority to settle personnel claims up to \$25,000. *Id.* para. 11-2a(2)(b). However, the authority to approve claims may be (and typically is) delegated to a subordinate judge advocate or claims attorney. *Id.* para. 1-5f.

2. *Id.* para. 11-20b.

3. Currently, a written request for reconsideration must be forwarded to the USARCS for final action if the claimant is not satisfied with the action taken by the field claims office. As an exception, the Chief, U.S. Army Claims Service Europe can take final action on any reconsideration request forwarded there by a subordinate office, as long as it does not involve approving a waiver of a maximum allowance. *Id.* para. 11-20b(4). The USARCS is considering an amendment to the claims regulation which would give staff judge advocates more authority to take final action on requests for reconsideration.

4. *Id.* para. 11-20c. The time period for filing a request for reconsideration used to be one year, but the 1995 regulation changed the time period to 60 days.

5. *Id.*

6. This distinction is not contained in either the claims regulation or the relevant Department of the Army pamphlet. However, since the purpose for the 60-day time limitation is to enable recovery action to be taken promptly, this distinction makes sense. See U.S. DEP'T OF ARMY, PAM. 27-162, LEGAL SERVICES, CLAIMS (15 Dec. 1989) [hereinafter DA PAM 27-162], and AR 27-20, *supra* note 1. While there is no definition of what constitutes a "compelling excuse" for purposes of waiving the 60-day time limit, the incidents which excuse a claimant's failure to provide timely notice of loss to a carrier (hospitalization or officially recognized absences) should be adequate, since they deal with the same issue: the government's inability to recover against the carrier responsible for the loss. See AR 27-20, *supra* note 1, para. 11-21a(3); DA PAM 27-162, *supra*, para. 2-52.

7. AR 27-20, *supra* note 1, para. 11-20b(3).

ant is satisfied with the initial action taken on the request. The best way to do this is to send the claimant a letter explaining the action taken and the claimant's rights and specifically asking the claimant if she wants the request forwarded.

If the claimant insists on having the request for reconsideration forwarded, the claims judge advocate who initially settled the claim must prepare a seven paragraph memorandum of opinion and forward the file through the staff judge advocate to the USARCS for final action.⁸ The seven paragraph memorandum should recommend what specific action should be taken on the request for reconsideration and should explain the reasons for the recommendation.⁹ If a claims judge advocate believes the requester should be paid an additional amount, the additional amount should be paid before the request is forwarded.¹⁰ For example, if the claimant in the illustration above insists that the request for reconsideration of the couch be forwarded, the claims judge advocate should pay the claimant the additional \$50 offered, prepare a seven paragraph memorandum, and forward the request through the staff judge advocate to the USARCS. The staff judge advocate must personally sign the memorandum or an endorsement to show that the staff judge advocate has taken personal action on the request.¹¹

If any additional payment is made on a request for reconsideration, the chronology sheet and the DD Form 1844, List of Property and Claims Analysis Chart, must reflect the additional payment.¹² The best way to do this is to write "reconsideration" and the additional amount paid in block 25 (the amount allowed column) of the DD Form 1844. This should be done in red or some other color which is different from the other entries on the DD Form 1844. If the file is forwarded, the outside of the file must be clearly marked "RECONSIDERATION."¹³ The claimant should be told that the claim has been forwarded, but not what was recommended.¹⁴

The reconsideration process provides important rights to claimants. It is crucial that claims personnel properly process requests for reconsideration to ensure that these rights are safeguarded. Lieutenant Colonel Masterton.

New Personnel Claims Management Program

The U.S. Army Claims Service (USARCS) has been developing a new personnel claims management program (also known as the "claims database") for the past year to replace the program currently being used in claims offices around the world. The new program performs all of the functions the current program does and also contains many enhancements, including: (1) working within a windows environment; (2) network capability, which allows multiple users to access the database simultaneously; (3) increased ease in managing the claims expenditure allowance; (4) better tracking of carrier recovery demands and deposits; and (5) a built-in query capability that will allow users and managers to access specific information they may need.¹⁵

The USARCS anticipates fielding the program late this summer. The program has been extensively tested by personnel at the USARCS and field claims offices to ensure that it is the best program possible. The USARCS has already conducted training at claims offices throughout the world to ensure that field claims office personnel can effectively use the program when it is fielded. The training was advertised extensively on the Claims Forum of the Legal Automation Army-Wide System Bulletin Board Service (LAAWS BBS) and at claims videoconferences. Judge advocates can obtain future information on the program through the Claims Forum or by contacting the Personnel Claims and Recovery Division at the USARCS. Ms. Kathie Zink and Lieutenant Colonel Pete Masterton.

Claims Training Course Offered

The U.S. Army Claims Service will conduct its 1997 training course 27-31 October 1997 at the Maritime Institute, Linticum, Maryland. Reservations for the course are managed by the Army Training Requirements and Resources System.

8. A written request for reconsideration must be forwarded to the USARCS for final action if the approval or settlement authority does not grant additional relief, if the claimant does not wish to accept an additional payment as full relief, or if the claimant does not respond by the suspense date. As noted above, the U.S. Army Claims Service, Europe, may take final action on certain requests for reconsideration from its subordinate offices. *Id.* para. 11-20b(4).

9. The seven paragraph memorandum of opinion should be arranged as follows: (1) claimant's name and address; (2) date and place the incident giving rise to the claim occurred; (3) the amount of the claim, the date it was filed, and the date reconsideration was requested; (4) the chapters under which the claim was considered and a brief description of the incident or issues raised on reconsideration; (5) facts; (6) opinion; and (7) recommended action. *Id.* para 11-19b.

10. *Id.* para. 11-20b(4).

11. The head of an area claims office is required to act personally on requests for reconsideration. *Id.* para. 1-5f. *See also* DA PAM 27-162, *supra* note 6, para. 2-59d.

12. DA PAM 27-162, *supra* note 6, para. 2-59d.

13. *Id.*

14. *Id.* The field claims office generally should not provide the claimant with the telephone number for the USARCS so the claimant can call to inquire about the status of the request. Such inquiries should be made through the field claims office.

15. This will enable judge advocates to generate statistics such as the number of claims which were filed for more than \$1,000 in the last month.

For more information, please contact Audrey Slusher at (301) 677-7009, extension 206 or DSN 923-7009, extension 206.