

## Chapter 6

### CLAIMS UNDER ARTICLE 139, UNIFORM CODE OF MILITARY JUSTICE (UCMJ) (10 U.S.C. 939)

**6.1. Scope.** This chapter explains the Air Force procedures for processing Article 139, UCMJ, claims.

**6.2. Claims Payable .** Appointing commanders may direct collection and pay a claim for property that Air Force military personnel willfully damage or wrongfully take, if the claim results from riotous, violent, or disorderly conduct. Article 139 applies to Air National Guard members only when they are performing duty under Title 10 of the United States Code. If a claim is payable under this chapter and also under another chapter, settlement authorities may pay the claim under this chapter, if AFLSA/JACC authorizes it.

**6.3. Claims Not Payable.** Appointing commanders do not pay:

6.3.1. Claims resulting from simple negligence.

6.3.2. Claims for personal injury or death.

6.3.3. Claims resulting from acts or omissions of Air Force military personnel performing legally authorized duties.

6.3.4. Claims of subrogees.

6.3.5. Claims arising from private indebtedness.

6.3.6. Claims for reimbursement for bad checks.

**6.4. Limiting Provisions.** A person who wishes to file an Article 139 claim against an Air Force member submits a complaint within 90 days of the date of the incident.

**EXCEPTION:** The claimant may file after 90 days, if the appointing commander finds good cause for the delay. A command determination of good cause or absence of good cause is final.

6.4.1. AFLSA/JACC must approve any assessment of damages in excess of \$5,000 against an offender for a single incident.

6.4.2. Appointing commanders may not pay indirect, remote, or consequential damages.

**6.5. Filing a Claim.** In order to file a claim in accordance with Article 139, the claimant must complain (orally or in writing) to the commander of the military organization or unit of the alleged offending member or members. If claimants are unsure what organization the offender belongs to, they may file a complaint with the commander of the nearest military installation. While claimants do not need to request a specific amount when they first complain, the claimant or authorized agent must present a claim for a specific amount in writing before appointing commanders make a settlement.

**6.6. Action by Commanding Officer Receiving the Complaint:**

6.6.1. If the commanding officer who receives the complaint has special court-martial convening authority (SPCMCA), and if the offender is a member of the command or is unknown, the commander appoints a board of officers to investigate the complaint.

6.6.2. A commanding officer without SPCMCA sends the complaint to the next higher officer in the chain of command exercising such court-martial convening authority.

6.6.3. If the offender is known, but is not a member of the command, the commander sends the complaint to the offender's immediate commanding officer.

6.6.4. If the offenders are members of different commands, whose commanding officers each have SPCMCA, the commander submits the complaint to the commanding officer nearest the place of the incident.

6.6.5. If the offender is a member of another military service, the commander sends:

6.6.5.1. The complaint to the offender's unit commander of that other military service.

6.6.5.2. A copy of the complaint to the legal office serving that unit commander.

## **6.7. Action by the Board of Officers:**

6.7.1. The board of officers investigates the facts and circumstances surrounding the complaint. The board notifies the offender, in writing, of the pending complaint and of these rights:

6.7.1.1. Article 31, UCMJ, rights including the right to counsel.

6.7.1.2. To examine evidence presented.

6.7.1.3. To present evidence in the offender's own behalf.

6.7.1.4. To receive the commanding officer's written decision.

6.7.2. The board of officers:

6.7.2.1. Determines if the claim falls under Article 139, UCMJ.

6.7.2.2. Identifies the offenders.

6.7.2.3. Determines liability and damages.

6.7.2.3.1. If the offender voluntarily makes payment of an amount in full satisfaction and final settlement, the claimant may seek no further recovery.

6.7.2.3.2. If the offender voluntarily makes a partial payment, the board deducts that amount in computing the assessment.

6.7.2.3.3. The board submits a report to the appointing commander, through the SJA, with findings based on the evidence. The board may recommend the following:

6.7.2.3.3.1. Assessing damages against the offender.

6.7.2.3.3.2. Assessing appropriate damages against individual unit members who were present when the damage occurred, but where authorities cannot individually identify the offender

6.7.2.3.3.3. Disapproving the claim.

**6.8. Assessing Damages.** When the board assesses damages and the offender is a member of the command, the SJA reviews the report for legal sufficiency and compliance with this chapter. The SJA deter-

mines if a preponderance of the evidence supports the findings and if the board's recommendations are consistent with the findings.

6.8.1. The SJA returns the record to the board for further investigation or correction, if irregularities or discrepancies exist, or sends the report to the appointing commander.

6.8.1.1. The appointing commander:

6.8.1.1.1. Determines if the claim falls under Article 139, UCMJ.

6.8.1.1.2. Sets the amount to be assessed against each offender. This amount does not exceed the amount that the board recommends.

6.8.1.1.3. Directs the accounting and finance officer to withhold the specified amount from the pay of each offender and to pay the claimant.

6.8.1.1.4. Notifies the claimant and the offender of the action taken.

6.8.1.1.5. Keeps the original and one copy of the approved board report.

**NOTE:** Neither the claimant nor the offender may appeal the decisions of the appointing commander.

6.8.1.2. The accounting and finance officer having custody of the offender's pay record pays the claim.

6.8.2. If the alleged offender is not a member of the command, the appointing commander sends the report directly to the offender's commanding officer exercising SPCMCA for final action.

6.8.3. If the alleged offender is a member of a different service, the appointing commander sends the report directly to the commander of the member's unit of the service concerned.

## **6.9. Reconsidering Article 139 Assessments:**

6.9.1. The commanding officer originally ordering the assessment may reconsider and change the decision, if the findings later prove to be wrong.

6.9.2. The successor in command may change or cancel the assessment only on the basis of:

6.9.2.1. Newly discovered evidence.

6.9.2.2. Fraud.

6.9.2.3. Obvious error of law or fact.

6.9.3. The commanding officer or the successor may take the actions stated above, even after transfer of the offender.

**6.10. Canceling Indebtedness.** Authorities may cancel indebtedness assessed under Article 139, UCMJ, only in accordance with this chapter. Other statutes authorizing the Secretary of the Air Force to cancel indebtedness of an enlisted member do not apply to Article 139, UCMJ. **Note:** *See 10 U.S.C. 9837(d), and DoD Military Pay and Allowances Entitlements Manual, paragraph 70722.*

**6.11. Effect of Disciplinary Action.** An Article 139 claim is separate and distinct from disciplinary action that authorities take under any other article of the UCMJ.

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