

CHAPTER 7

CLAIMS UNDER ARTICLE 139, UNIFORM CODE OF MILITARY JUSTICE

A. Authority.

1. Unlike other administrative claims, the statute authorizing this administrative claim, Title 10, U.S. Code, Section 939 (Article 139, Uniform Code of Military Justice (UCMJ)), provides each commanding officer with authority similar to that of a settlement authority.
2. Article 139, UCMJ authorizes the Secretary to promulgate regulations to carry out the mandate of the Article. This authority has been delegated to the Commandant in Title 49 Code of Federal Regulations 1.46(pp). The Commandant re delegated this authority to the Chief Counsel in Title 33 Code of Federal Regulations 25.131. The regulations for carrying out the mandate of Article 139, UCMJ are contained in 33 Code of Federal Regulations, Part 25, Subpart G, and as supplemented by this chapter.

B. Scope.

1. Article 139, UCMJ neither creates any U.S. liability nor authorizes the expenditure of federal funds for the payment of claims. Article 139, UCMJ instead provided the authority to administratively determine whether or not a Coast Guard member is liable to a claimant and provides a means for compensating the claimant from the pay of the responsible Coast Guard member.
2. Due to the unique nature of this claim other Chapters of this Manual and Title 33 Code of Federal Regulations Part 25 (other than Subpart G) are not applicable unless specifically referenced. Title 33 Code of Federal Regulations 25.701 - 25.709 apply.

C. Claimants. The following persons may not be claimants:

1. A subrogee and
2. A department, agency, or instrumentality of the U.S.

D. Claims Cognizable. A claim for damage to, or loss or destruction of, property that has been willfully damaged or destroyed, or wrongfully taken by a Coast Guard member.

E. Claims Not Payable. A claim is not payable if it:

1. Results from death or personal injury;

- 7.E.2. Results wholly or partly from the grossly negligent, or reckless act of the claimant, or the claimant's agent or employee;
3. Results from negligence on the part of Coast Guard personnel;
4. Is for indirect or remote damages;
5. Results from acts or omissions of military personnel while acting within the scope of their employment;
6. Extends to damage or loss that results from the claimant's failure to mitigate damages;
7. Has been paid by a third party;
8. Is a subrogated claim; or
9. Is for damage to or loss of property owned by the United States or by a Nonappropriated Fund Activity.

F. Assessment Limitation on Claims. A claim is permitted in any amount; however, assessment is limited to an amount equal to one-half of one month's basic pay of the offender. If there is more than one co-offender the amount assessed against each offender shall be based on the basic pay of the co-offender receiving the lowest monthly pay. The total award may be assessed in this maximum amount against each co-offender. A lesser amount may be assessed individual co-offenders if the fact finding body determines the various co-offenders to have differing liabilities.

G. Procedure.

1. Time Limitation. A claim may be settled under this Chapter only if presented within 90 days after it accrues unless good cause is shown for the delay.
2. Claim form.
 - a. An oral complaint is sufficient notice.
 - b. The oral complaint shall comply with section 3-A before further action is taken on the complaint. The first Coast Guard command receiving the oral or written complaint in an insufficient format shall assist the claimant, if necessary, in the preparation of the claim form. Before the claimant is advised to go to any expense in proving damages, he should be advised of the maximum amount allowable under section 7-F. (e.g. If a complaint is against two Coast Guard personnel in pay

- 7.G.2. b. (cont'd) grade E-2, the maximum the claimant can receive under this chapter is two times one-half of one month's basic pay of an E-2.)
3. Once the claim is documented, it shall be forwarded to the commander of the units to which the alleged Coast Guard offenders were attached at the time of the damage or loss. If difficulties arise in determining the appropriate commander, inquiries should be directed to Commandant (G-LCL). The claimant shall be informed of any forwarding of the claim by Coast Guard Form CG-4217. If the identity of the alleged offenders and their units are unknown, the claim shall be forwarded to the Commander of the Coast Guard District within which the incident occurred.
 4. Upon receipt of the claim, the commander of the unit or units to which the alleged offenders are attached or the cognizant district commander shall convene an appropriate fact-finding board of at least one, but no more than three, commissioned officers, to investigate the complaint, and if appropriate, to assess the damages sustained.
 5. A fact finding board required for any other reason which meets the requirements of subparagraph 7-G-4 may also serve as the fact-finding board conducted for the purposes of Article 139, UCMJ. (See paragraph 7-G-3 concerning notifying the claimant.) The command to which an offender is attached at the time the fact-finding board submits its report shall be the command which takes action on the report of an investigation and assesses, if appropriate, any damages.
 6. The board shall be guided as appropriate, by the Administrative Investigations Manual (COMDTINST M5830.1).
 7. The board may refer to other Chapters of this Manual or Title 33 Code of Federal Regulations Part 25 for guidance in determining the measure of damages.
 8. A determination of damages and the liability of each alleged offender shall be stated as findings of fact or opinions as appropriate. The report shall recommend the amount, if any, to be assessed and charged against the pay of each alleged offender.
 9. Action by the command upon the report of the fact-finding board.
 - a. If an offender is no longer attached to the command ordering the investigation when the investigation is completed, the investigation shall be immediately

- 7.G.9. a. (cont'd) forwarded by the convening command to the offender's new command or the common superior of each command to which the offenders are presently attached.
- b. The command shall specifically approve in whole or in part or disapprove the assessment or nonassessment against offenders or alleged offenders attached to the command.
- c. If the command's action is an approval in part or a disapproval of the fact-finding board's recommendation concerning assessment against an offender, it shall be supported by a detailed endorsement which discusses the factual and legal matters supporting the action.
- d. If the command determines that the claim be disapproved (that no member of the command is responsible), the claimant is informed in writing by certified or registered mail, return receipt requested.
- e. If the command determines that an assessment shall be charged against a member of the command;
- (1) The command shall inform the offender in writing of the amount assessed, and that an appeal may be submitted within 15 days to the next superior in the chain of command via the command approving the assessment.
- (2) On the sixteenth day after notice to the offender if the offender does not appeal the assessment or upon receipt of the reviewing authority's action on appeal, the command shall:
- (a) Inform the claimant in writing by certified or registered mail, return receipt requested, that the claim is disapproved; or
- (b) Inform the claimant in writing of the amount in which the claim is approved, as applicable and direct the Authorized Certifying Officer to check the members pay in the amount of the approved assessment and remit payment to the claimant.
10. There is no appeal available to the claimant. The claimant may request reconsideration by the command