

U.S. Department of
Homeland Security

United States
Coast Guard



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Pacific Area

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5830
26 March 2007

MEMORANDUM

From: [REDACTED]
C. D. Wurster, VADM
CG PACAREA (P)

To: [REDACTED] CDR
CG PACTACLET

Subj: ADMINISTRATIVE INVESTIGATION, DEATH OF COAST GUARD PETTY OFFICER

Ref: (a) Administrative Investigations Manual, COMDTINST M5830.1

1. You shall conduct a single-officer investigation under reference (a) into all the circumstances surrounding the death of a Coast Guard petty officer from MSST Anchorage on 25 March 2007.
2. See chapter 6, and enclosure (12), of reference (a) as to specific facts that must be determined. You must express an opinion as to the line of duty and misconduct status of any injured or deceased Coast Guard members. You may recommend appropriate administrative or disciplinary action. You are not required to conduct a hearing. You are not required to take testimony under oath. No opinion shall be expressed concerning liability for any claims or potential claims.
3. Because there is the potential for claims and/or litigation against the United States, paragraphs 1-c-2.c and 4-A-3.d of reference (a) shall be complied with, and the following language applies and shall be included in the first paragraph of your investigative report and interim reports:

This investigation is appointed in contemplation of litigation and to assist attorneys acting on behalf of the Judge Advocate General of the Coast Guard and representing interests of the United States in this matter.
4. Your investigation shall be initiated as soon as possible. Your final report is due to me on or before 21 May 2007. If you are unable to meet this deadline, provide an explanation for the delay in a statement to me in advance of the applicable deadline.
5. Your investigative report shall follow the format of enclosure (5) of reference (a). Should you believe that a modification of this format is appropriate, communicate that fact to the Pacific JAG Officer and me in advance.
6. To the extent feasible, coordinate the collection of evidence with the MISHAP Board appointed to investigate the deaths -- except for witness statements taken by the MISHAP Board under the promise of confidentiality. To the extent they are relevant and known to you, you may adopt any findings of that board.
7. You shall comply with the Privacy Act of 1974 and Article 31 of the Uniform Code of Military Justice; see section 2-H and paragraph 4-A-2.c of reference (a).

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8. Because this investigation is conducted in contemplation of litigation, you shall consult with the Pacific JAG Office or me should you have any questions about this assignment. Unless authorized by the Pacific JAG Officer, do not discuss or share your deliberations with anyone other than Coast Guard Counsel, the Pacific Area Chief of Staff, and me.

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Copy: CG PACAREA (Pp, Pr, Pl)
COMDT (CG-0945, CG-3RC)
CGD THIRTEEN (d/dcs)
CG SECTOR Seattle
CG MSST Anchorage

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FM COMDT COGARD WASHINGTON DC//G-LGL//
TO ALCOAST

BT

UNCLAS //N05830//

ALCOAST 036/02

COMDTNOTE 5830

SUBJ: INTERIM CHANGE TO ADMINISTRATIVE INVESTIGATIONS MANUAL

A. ADMINISTRATIVE INVESTIGATIONS MANUAL, COMDTINST M5830.1

1. THIS ALCOAST CLARIFIES COAST GUARD POLICY DUE TO A RECENT CHANGE IN SURVIVOR BENEFIT LAW.

2. ON 28DEC01, THE PRESIDENT SIGNED INTO LAW A PROVISION THAT DIRECTS THE SECRETARY CONCERNED (EITHER SECTRANS OR SECNAV) TO PAY A SURVIVOR BENEFIT PLAN ANNUITY TO THE SURVIVING SPOUSE OF A (DECEASED) ACTIVE DUTY MEMBER WHO: (A)(1) HAD BECOME ELIGIBLE FOR RETIRED PAY, OR (2) WHO QUALIFIED FOR RETIRED PAY BUT HAD NOT YET APPLIED OR BEEN GRANTED IT, OR (3) WHO COMPLETED 20 YEARS ACTIVE SERVICE BUT WAS NOT ELIGIBLE TO RETIRE AS AN OFFICER BECAUSE THE MEMBER HAD NOT YET COMPLETED 10 YEARS OF ACTIVE COMMISSIONED SERVICE, OR (B) QUOTE: WHO DIES IN LINE OF DUTY WHILE ON ACTIVE DUTY, UNQUOTE.

3. SURVIVOR BENEFIT PLAN ANNUITIES ARE NOW AVAILABLE FOR SPOUSES OF MEMBERS WHO HAVE NOT QUALIFIED FOR RETIREMENT AS DESCRIBED ABOVE (A)(1) THROUGH (A)(3), BUT WHO DIED IN THE LINE OF DUTY WHILE ON ACTIVE DUTY. FOR THOSE WHO HAVE QUALIFIED FOR RETIREMENT AS DESCRIBED ABOVE IN (A)(1) THROUGH (A)(3), THE AMOUNT OF BENEFIT PAID MAY DEPEND ON WHETHER THE DEATH WAS IN LINE OF DUTY.

THEREFORE, THE COAST GUARD MUST REVERSE COURSE FROM ITS LONG PRACTICE OF REFRAINING FROM COMMENT ON WHETHER MEMBERS DIED IN THE LINE OF DUTY. IN LINE OF DUTY DETERMINATIONS ARE NOW REQUIRED FOR ALL DECEASED MEMBERS. THIS REQUIREMENT IS RETROACTIVE TO 10 SEPT 2001. NOTE THAT THERE HAS BEEN NO CHANGE TO THE PRESUMPTION THAT MEMBERS WERE IN THE LINE OF DUTY. THEREFORE, UNLESS THERE IS CLEAR AND CONVINCING EVIDENCE TO REBUT A LINE OF DUTY PRESUMPTION, COMMANDING OFFICERS SHOULD NOT MAKE A NOT LINE OF DUTY RECOMMENDATION.

4. THE FOLLOWING CHANGES TO REF (A) ARE IMMEDIATELY APPLICABLE AND WILL BE INCLUDED IN THE FUTURE REVISION OF REF (A):

A. DISREGARD THE GUIDANCE IN PARAGRAPH 5-J-1 ON PAGE 5-9.

B. A REPRESENTATIVE OF THE DECEASED MEMBER MUST BE EITHER DESIGNATED A PARTY TO AN INVESTIGATION OR PROVIDED A HEARING PRIOR TO AN ADVERSE DETERMINATION THAT THE DECEASED MEMBER WAS NOT IN LINE OF DUTY AT THE TIME OF DEATH. THIS IS A SLIGHT CHANGE TO PARAGRAPH 5-M-1 AT PAGE 5-12, WHICH DISCUSSES NOTICE AND OPPORTUNITY FOR A (LIVING) MEMBER TO CONTEST AND AVOID AN ADVERSE DETERMINATION.

C. A REPRESENTATIVE OF THE DECEASED MEMBER MUST BE AFFORDED ALL THE RIGHTS AT A LINE OF DUTY HEARING THAT WOULD BE AFFORDED TO A (LIVING) MEMBER, WITH EXCEPTION OF ARTICLE 31 UCMJ RIGHTS, WHICH ARE INAPPLICABLE AS TO A DECEASED MEMBER AND HIS OR HER REPRESENTATIVE. THIS IS A SLIGHT CHANGE TO PARAGRAPH 5-M-2 AT PAGES 5-12 AND 5-13, WHICH DISCUSSES RIGHTS OF MEMBERS AT SUCH LINE OF DUTY HEARINGS.

D. A REPRESENTATIVE OF THE DECEASED MEMBER MAY APPEAL AN ADVERSE DETERMINATION OF NOT LINE OF DUTY TO COMMANDANT (G-L). THIS IS A SLIGHT CHANGE TO PARAGRAPH 5-N-2 AT PAGE 5-14, WHICH PERMITS A MEMBER TO APPEAL WITHIN TEN (10) WORKING DAYS. THE REPRESENTATIVE OF A DECEASED MEMBER HAS TWENTY (20) WORKING DAYS IN WHICH TO APPEAL AN ADVERSE DETERMINATION OF NOT IN LINE OF DUTY.

E. SAMPLE CONVENING ORDERS PROVIDED AS ENCLOSURES (3B) AND (3C) SHOULD BE EDITED TO REFLECT THAT LINE OF DUTY DETERMINATIONS SHALL BE MADE FOR DECEASED MEMBERS ON ACTIVE DUTY, WHETHER OR NOT RETIRED OR QUALIFIED FOR RETIRED PAY UNDER SCENARIOS (A)(1) THROUGH (A)(3),

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ABOVE. THEREFORE, THE PHRASE STATING: BUT NO OPINION SHALL BE EXPRESSED CONCERNING DECEASED MEMBERS, FOUND IN PARAGRAPH 2 OF ENCLOSURE (3B) AND PARAGRAPH 3 OF ENCLOSURE (3C), SHALL BE STRICKEN.

F. THE CHECK-OFF LIST PROVIDED AS ENCLOSURE (7C) SHOULD BE REVISED FROM THE (EXISTING) FIRST-PERSON CONTEXT TO A THIRD-PERSON REPRESENTATIONAL CONTEXT FOR LINE OF DUTY DETERMINATION HEARINGS FOR DECEASED MEMBERS, BUT OTHERWISE REMAINS A VIABLE AND VALUABLE TOOL. SPECIFICALLY, THE REPRESENTATIVE SHOULD BE ADVISED OF THE NATURE OF THE DETERMINATION HEARING PER SUBPARAGRAPH 1, BUT NEED NOT BE ADVISED PER SUBPARAGRAPHS 2 OR 3. THE REPRESENTATIVE SHOULD BE ADVISED THAT AN ADVERSE DETERMINATION OF NOT IN LINE OF DUTY WILL BAR PAYMENT OF ALL OR PART OF A SURVIVOR BENEFIT PLAN ANNUITY, WHICH IS A SIGNIFICANT REVISION TO SUBPARAGRAPH 4. SUBPARAGRAPHS 5 THROUGH 7 REMAIN APPLICABLE, BUT REFERENCE TO THE UCMJ SHOULD BE DELETED.

5. SERVICING LEGAL OFFICERS SHOULD ENSURE THAT COMMANDERS AND OFFICERS IN CHARGE ARE FULLY AWARE OF THIS CHANGE.

6. INTERNET RELEASE IS AUTHORIZED.

7. RADM ROBERT DUNCAN, CHIEF COUNSEL, SENDS.

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