

Interim Change 28-98 is incorporated in this change. Interim Change 28-98 also affects other chapters and will not be deleted from the interim changes cited in the web site.

CHAPTER 34

PAY ENTITLEMENT OF MEMBERS MISSING, MISSING IN ACTION, INTERNEED, ETC., AND PAYMENTS TO DEPENDENTS

3401 DEFINITIONS

340101. Member. See the Definitions section of this volume (item 77, page lii).

340102. Dependent. See the Definitions section of this volume (item 36, page xlvi). In addition, for the purposes of this chapter, the term "dependent" also means a dependent designated in official records, or a person determined to be a dependent by the Secretary of the Military Service concerned or the Secretary's designee.

340103. Missing Status. See the Definitions section (item 80, page liii) of this volume.

3402 AUTHORITY TO MAKE OFFICIAL DETERMINATIONS UNDER THE MISSING PERSONS ACT (reference (aa))

See Table 34-1.

3403 ENTITLEMENT TO PAY AND ALLOWANCES WHILE IN A MISSING STATUS

340301. General. A member who enters a missing status is entitled to the pay and allowances to which entitled when the missing status began or to which the member later becomes entitled. The right to a certain pay or allowance is not affected by the fact that the member had not actually received payment before entering missing status. See Table 34-2 for items of entitlement.

★340302. BAH and BAS Entitlement. Members without dependents are entitled to BAH at the without-dependent rate. Enlisted members are entitled to BAS at the rate payable when rations in kind are not available. Payments of these allowances are authorized from the beginning of the missing status, even though there was no housing or subsistence allowance entitlement before the missing status began.

3404 ALLOTMENTS FOR MEMBERS IN MISSING STATUS

Allotments in effect before a member enters a missing status may be continued. As directed by the Secretary of the Military Service concerned (or designee), allotments may be initiated, suspended, resumed, increased, decreased, or discontinued where circumstances so warrant in the interests of the missing member, the dependents, or the government.

3405 TAX WITHHOLDING FOR MEMBERS IN MISSING STATUS

See paragraph 440102 and subparagraph 440103.C.2 of this volume.

3406 REVIEW OF CASE AFTER 12 MONTHS AND FINDING OF DEATH

340601. Review of Case After 12 Months. When a 12-month period (from starting date of the member's absence) is about to end and the member has not been reported officially as dead, imprisoned, or interned, the case is fully reviewed. After this review and when the 12-month period has ended (or following any later review warranted by information received or other circumstances), the Secretary of the Military Service concerned (or designee):

A. Directs continuance of the member's missing status, if the member reasonably may be presumed to be living, or

B. Makes a finding of death.

340602. Continuance of Member's Missing Status. When a member is continued in a missing status under subparagraph 340601.A, above, credit pay and allowances to his or her account. Allotments are continued, discontinued, increased, or initiated as provided in Chapters 41 through 43 of this volume. When the Secretary of the Military Service concerned (or designee) officially reports that a missing member is alive and in the hands of a hostile force or is interned in a foreign country, allotment payments are authorized. These payments on the member's behalf continue through the date on which the Secretary of the Military Department concerned (or designee) receives evidence that the member is dead. When a member returns to Military Service control, the member resumes control of allotments.

340603. Finding of Death. A finding of death includes the date upon which death is presumed to have occurred for the purposes of stopping pay and allowances, settlement of accounts, and payment of death gratuities. This date is the day following the day the member has been absent 12 months, unless the missing status is continued beyond that day. In this case, the date of death is the date determined by the Secretary of the Military Department concerned (or designee).

340604. Change in Date of Death. Payment of an account made following a report, determination, or finding of death may not be recovered and the case may not be reopened because of a later report or determination fixing an earlier date of death. If a later date of death is established, the account is reopened and settled on the basis of the later date.

3407 CONCLUSIVENESS OF SETTLEMENTS

Settlements made under this chapter are conclusive upon the accounting officers of the government in effecting settlement of the accounts of a disbursing officer. The Secretary of the Military Department concerned (or designee) is authorized to settle members' accounts for payment under the Missing Persons Act (reference (aa)). In the absence of fraud or criminal intent on the part of the disbursing officer, credit is allowed for any erroneous payment or overpayment made by the disbursing officer under this chapter. No recovery may be made from any officer or employee who authorizes any payment under this chapter in the absence of fraud or criminal intent on the part of that officer or employee.

3408 PENALTY FOR FRAUDULENT RECEIPT OF MONIES UNDER THIS CHAPTER

Any person who receives any money, check, or allotment under this chapter without being so entitled, and with intent to defraud, will be punished by a fine of not more than \$2,000, or by imprisonment for not more than 1 year, or both.

3409 PAYMENT OF DEATH GRATUITY

See Chapter 36 of this volume for payments when member in missing status is reported dead, or for whom a finding of death is made.

3410 ACCRUED LEAVE

341001. Accumulation. Members, while in a missing status, can accumulate leave without regard to any leave accrual limitations currently expressed in law. However, a member whose death is prescribed under section 3406, above, may, in addition to leave accrued before entering a missing status, accrue not more than 150 day's of leave during the period of a missing status, unless the actual date of death is found to have occurred on a date when the member had accrued leave in excess of 150 days. Leave accumulated while in a missing status may not be taken but shall be paid.

341002. Settlement. Leave accumulated while in a missing status will be accounted for separately and settled as follows:

A. Return From Missing Status. Members will be paid for all leave accumulated while in a missing status as soon as possible after return from a missing status. Items to be included in the accrued leave payment are provided in Table 35-5. Computation will be based on the rates to which the member was entitled on the date that his or her name was removed from the missing status.

B. Death in a Missing Status. Notwithstanding the death of a member while in a missing status, leave will continue to accrue to his or her account through the date that the Secretary of the Military Department concerned (or designee) receives evidence that the member

is dead or through the date of death as prescribed or determined under section 3406, above. Although leave will accrue for the entire missing status period, the actual accrued leave settlement will vary according to circumstances.

1. Death Prior to Fifth Year MIA Status. Payment for unused leave accrued to a member's credit while in a missing status is for 150 days, providing the he or she was continued in a missing status for 5 or more years. Payment for 150 days is made even though it later is found that member's actual death occurred within the first 5 years after entry into missing status or upon entry into such status. Settlement for accrued leave is based on the amount of leave accrued to the member's credit before entering the missing status and the 150 days' leave described in paragraph 341001, above. Items to be included in the accrued leave payment are identified in Table 35-5. Computation is based on the rates to which the member was entitled on the date of death.

2. Death Subsequent to Fifth Year MIA Status. When it is found that the member's actual death occurred subsequent to the fifth year after entry into a missing status, payment for unused leave accrued to his or her credit while in a missing status is for the total accrued until death. Settlement for accrued leave is based on the amount of leave accrued to the member's credit before entering the missing status plus the accrual until death described herein. Items to be included in the accrued leave payment are identified in Table 35-5. Computation is based on the rates to which the member was entitled on the date of death.

3. Death, MIA Status Less Than 5 Years. Payment for unused leave accrued to a member's credit while in a missing status, when he or she was continued in a missing status for less than 5 years, is for the total accrued through the date that the Secretary of the Military Department concerned (or designee) makes a finding of death. Settlement for accrued leave is based on the amount of leave accrued to the member's credit before entering the missing status plus the accrual until finding of death described herein. Items to be included in the accrued leave payment are identified in Table 35-5. Computation is based on the rates to which the member was entitled on the date of death.

4. Special Conditions of Entitlement. Settlement of accrued leave for a deceased member who was promoted while in a missing status is based on the amount of leave accrued to his or her credit before entering the missing status and the amount of leave accumulated in a missing status as provided in the applicable provisions of subparagraphs 341002.B.1, 2, or 3, above. Computation is based on the grade to which promoted and rate of pay in effect on the date of the presumed finding or the date of the determination of death. This will apply even though the Secretary of the Military Department (or designee) concerned later determines that the member died before the date of promotion. See Table 34-2, rule 6.

3411 REFERENCES341101. Army

A. Casualty accounting, reporting, and notification. See AR 600-10 (reference (bi)).

B. Transportation of dependents, household goods, and personal effects. See JFTR, volume 1 (reference (d)), and AR 37-106 (reference (bj)).

341102. Navy

A. Casualty accounting, reporting, and notification. See MILPERSMAN (reference (f)).

B. Transportation of dependents, household goods, and personal effects. See JFTR, volume 1, and NTI (reference (d)).

341103. Air Force

A. Casualty accounting, reporting, and notification. See AFI 36-3002 (reference (ea)), AFMPCI 36-9 (reference (eb)), and AFR 35-40 (reference (bn)).

B. Transportation of dependents, household goods, and personal effects. See JFTR, volume 1 (reference (d)), AFR 75-25 (reference (bo)) and AFR 177-103 (reference (bp)).

341104. Marine Corps

A. Casualty accounting, reporting, and notification. See MCO P-3040.4 (reference (bk)).

B. Transportation of dependents, household goods, and personal effects. See JFTR, volume 1, NTI (reference (d)), and Marine Corps Transportation Manual (MCO P4600.7 (reference (bl))).

AUTHORITY TO MAKE OFFICIAL DETERMINATIONS UNDER THE MISSING PERSONS ACT							
R U L E	A	B	C	D	E	F	G
	If missing member is	authority to make all determinations is vested with the Secretary of the	who has delegated to	authority to make determinations of	and has delegated to the	authority to make determinations	and all such determinations
1	Army	Army	the Adjutant General, US Army, Washington DC 20310	status of members, of death, and of essential dates	Director, Defense Financing and Accounting Service-Indianapolis Center, Indianapolis IN 46249-0001	pertaining to facts of dependency and to the initiation, continuance, suspension, or resumption of allotments of pay	are conclusive in the absence of fraud or criminal intent
2	Navy	Navy	Bureau of Naval Personnel, ATTN: CODE PERS-6, Washington DC 20370-5156	status of members and their dependents, of death, of essential dates and facts of dependency			
3	Marine Corps		Head, Personal Affairs Branch, Human Resources Division Manpower Department US Marine Corps, Washington DC 20380-0001				
★4	Air Force	Air Force	Cdr, HQ AFPC, 550 C Street West, Randolph AFB TX 78150	status of members and their dependents, of death, and of essential dates	Director, Defense Finance and Accounting Service-Denver Center, 6760 E. Irvington Place, Denver CO 80279-3000	pertaining to facts of dependency, starting, stopping, or changing allotments of pay, waiving recovery of erroneous payment or overpayment, and settling accounts of members affected	

Table 34-1. Authority to Make Official Determinations Under the Missing Persons Act

PAY AND ALLOWANCES WHICH ACCRUE TO MISSING MEMBERS								
R U L E	A				B	C	D	E
	When member is				who is	then member is	with accounts maintained in	and
	Army	Navy	Marine Corps	Air Force				
★1	X				missing, missing in action, interned in a foreign country, beleaguered or besieged by a hostile force, or detained in a foreign country against a member's will	entitled to receive or have credited to member's account the pay and allowances to which entitled when missing status began or to which member becomes entitled later, as follows: Basic pay Special pay Incentive pay for Hazardous duty BAH (note 7) BAS (note 7) FSA I FSA II (note 1) Station per diem Allowances for not more than 90 days (note 2) HFP if the member qualified Immediately before entry to a missing status (note 8)	DFAS-IN	payments continue through date of receipt by the Military Service concerned of evidence of death of the member or date of presumption of death made by the Secretary of the Military Department concerned or Secretary's designee, or date of return to Military Service jurisdiction (note 3)
2		X					DFAS-CL	
3			X				DFAS-KC	
4				X			DFAS-DE	
5	X	X	X	X	officially determined to be absent without authority rather than in a missing status	not entitled to pay and allowances for any such period (note 4)		
6	X	X	X	X	an officer, warrant officer or enlisted member who receives a promotion while in a missing status (note 5)	entitled to pay and allowances of the pay grade to which promoted from the date of orders announcing the promotion		
7	X	X	X	X	in a missing status has a change of conditions upon which pay and allowances are based	entitled to the pay and allowances based on the changed conditions (note 6)		

Table 34-2. Pay and Allowances Which Accrue to Missing Members

PAY AND ALLOWANCES WHICH ACCRUE TO MISSING MEMBERS								
R U L E	A				B	C	D	E
	When member is				who is	Then member is	with accounts maintained in	and
	Army	Navy	Marine Corps	Air Force				
8	X	X	X	X	an enlisted member who continues in missing status after expiration of term of service	entitled to continuance of pay and allowances		
9	X	X	X	X	in receipt of or has placed to member's credit pay, wages, allowances, or other compensation from the hostile force	not charged or debited with any such amount against member's pay and allowances		

NOTES:

1. A member may qualify for FSA-T while in a missing status if the continuous period of more than 30 days is completed after entering the missing status. (See paragraphs 270303 and 270304.)
2. Travel per diem and clothing monetary allowances do not accrue during a missing status, even though member was entitled to them when missing status began.
3. When facts or events warrant, the Secretary of the Military Department concerned (or designee) may change or modify a prior determination.
- ★4. See paragraph 260501 recontinuance of credit for BAH for 2 months following month of absence for members in pay grades E-1, E-2, E-3, or E-4 (4 years or less service) with dependents.
5. This applies even though the Secretary of the Military Department concerned (or designee) is later made that the member died before the date of promotion.
- ★6. For example, if the sole dependent of a missing member dies, credit for BAH at the with-dependents rate ceases and any allotment in force in the dependent's favor is stopped and deductions cease.
- ★7. Members without dependents are entitled to BAH at the without-dependent rate. Enlisted members are entitled to BAS at the rate payable when rations in kind are not available. See paragraph 340302.
8. See paragraph 440102 and subparagraph 440103.C.2 to determine possible Combat Zone Tax Exclusion implications.

Table 34-2. Pay and Allowances Which Accrue to Missing Members (Continued)