

CHAPTER 30

DEATH OF RETIREE3001 ARREARS OF PAY

300101. General. Entitlement to retired pay terminates on the date of the retiree's death. Arrears of pay include all unencumbered amounts due to deceased member. Arrears are not due if the retiree waived pay in favor of a civil service annuity. VA benefits terminate on the last day of the month before death. For members who waive retired pay for VA benefits, only retired pay is due on behalf of the member for the month of death. A retiree's account is placed in a suspended status upon receipt of a notification of death from any source until the date of death can be verified. The retiree's account is terminated upon receipt of a death certificate or DD Form 1300 (Report of Casualty).

300102. Related Inquiries. The Military Department concerned advises the surviving spouse to contact the Department of Veterans Affairs or the Social Security Administration on matters relating to entitlements benefits payable by those agencies.

300103. Responsibilities. The DFAS-Cleveland Center, when notification of a retiree's death is received, terminates payment of retired pay; recoups outstanding retired pay checks or direct deposit payments; discontinues and collects overpayments of allotments; pays death gratuity if applicable; collects debts; furnishes claim forms to prospective beneficiaries; and prepares vouchers and tax statements upon final account settlement.

300104. Eligible Beneficiaries. Each Military Service periodically advises retirees of their right to designate a beneficiary or beneficiaries to receive the amounts due, and disposition to be made of unpaid amounts where no beneficiary or beneficiaries have been designated. Any person or persons including a legal entity or the estate of the member may be designated.

A. Arrears of retired pay are paid to the person living on the date of the retiree's death in this order of precedence:

1. Beneficiary designated by the member in writing, if the designation is received by the Military Department concerned before the member's death

2. Surviving spouse

3. Children and their descendants, by representation

a. Adopted Child. An adopted child is a legal heir in every state and, therefore, is entitled to payment of unpaid pay and allowances, if otherwise proper. If the deceased retiree's child is adopted by others, the child is a beneficiary only in those states where an adopted child inherits from its natural father.

b. Stepchild. A stepchild is not an eligible beneficiary, unless adopted by the deceased retiree.

c. Illegitimate Child. An illegitimate child may not be paid unpaid pay and allowances of a deceased retiree, unless that child is recognized for inheritance purposes under the laws of the jurisdiction involved.

4. Father and mother in equal parts or, if either is dead, the survivor

5. Legal representative

6. Person entitled under the law of the domicile of the deceased retiree

B. The retiree may change a beneficiary previously designated if the change is in writing and is received by the Military Department concerned before the retiree's death.

C. If there is no person listed in the order of precedence in this section, obtain a claim from the person paying the funeral expenses.

D. If the retiree was killed by the beneficiary, the arrears are not paid to that person unless evidence is received which clearly absolves the beneficiary of any felonious intent. This does not preclude the person from receiving the arrears in the capacity of custodian or guardian of minor children.

E. If the beneficiary dies after the retiree but before receiving final settlement, the arrears are paid to the beneficiary's estate. If doubt as to entitlement exists, forward claim to the DFAS Cleveland Center for review and payment.

300105. Substantiating Documents and Collection of Overpayments

A. To effect settlement, these documents must be a matter of record:

1. Completed SF 1174 (Claim for Unpaid Compensation of Deceased Member of the Uniformed Services) from the beneficiary

2. Proof of death (DD Form 1300 or a copy of the death certificate)

3. Retirement orders

4. Adoption papers, court orders of appointment, or custodianship papers, if required

B. Every attempt should be made to recover all outstanding checks or direct deposits (not negotiated before the retiree's death or forwarded past the date of entitlement) or the proceeds thereof. Unrecovered funds are treated as erroneous payments with the indebtedness

subject to the debt collection authority. In situations where the recipient of the erroneous payments is also the beneficiary for arrears of pay, the amount of arrears due the individual should be offset administratively by the erroneous payments received by the individual. In situations where there has been an erroneous payment to an individual who is not entitled to it, and another individual is entitled to the retiree's arrears of pay, payment of the amount due as arrears should be made to the appropriate payee, regardless of whether collection has been made from the recipient of the erroneous pay.

300106. Questionable Date of Death

A. When the date of death is shown as a "found date," the Military Department concerned verifies whether an autopsy was performed. If so, use the date of death determined by the coroner. If two dates are shown, such as member dies between 2300, June 10, 1976, and 0400, June 11, 1976, use the earlier date since that was the last date member was known to be alive. If neither is available, obtain a statement from one or more disinterested persons attesting to the last known date that the member was alive. When this statement is received, settle the arrears through submission to the Defense Office of Hearings and Appeals.

B. In claims involving missing persons, provided there is no evidence to the contrary, assume the date of death to be the presumed date established by state court decree.

C. If evidence exists that a retiree died on a particular date several years before the date of presumptive death declared by a state court, arrears of pay are payable only through the earlier date of suspected death.

D. A judicial decree is not necessary to establish RSFPP or SBP annuity payments if a person has been missing for more than 30 days and a determination by the Secretary of the Military Department concerned (or designee) is made that presumes the member to be deceased (see paragraph 330206 and paragraph 420212 of this volume).

300107. Doubtful Claims. Cases involving questions of fact or law cannot be paid without approval of the Defense Office of Hearings and Appeals (DOHA).

A. These include cases when:

1. Doubt exists as to the amount or validity of the claim.
2. Doubt exists as to the person or persons properly entitled to the payment.

B. Notify claimant that claim has been forwarded to DOHA for approval of settlement.

300108. Six-Year Statute of Limitations

A. Title 31, United States Code, section 3702(b) (reference (er)), limits the time for filing of claims against the United States to 6 years, effective July 2, 1975. A claim that accrued before July 2, 1969, was barred if it had not been received by the GAO before July 2, 1975. Claims which accrued on or after July 1, 1965, were not barred if they were received by the GAO before July 2, 1975.

B. Effective June 15, 1989, the GAO ruled that claims may be filed with either the individual federal agency or with GAO within 6 years after the time the claim accrued or the claim is forever barred. Since the transfer of certain functions from GAO to OMB effective June 30, 1996, claims are filed with the Department of Defense.

300109. Three-Year Rule. When the person entitled to arrears of pay has not submitted a claim and cannot be located within 3 years after the retiree's death, payment is made to the person or persons in the same class of entitlement, or in the absence of anyone in the same class, next in order of precedence.

300110. Death of Mentally Incompetent Retiree. If retired pay was waived in favor of VA compensation, but compensation was withheld because the retiree's estate exceeded \$1,500, contact the Department of Veterans Affairs to ascertain periods and reasons for non-payment of VA compensation and verify whether withdrawal of the waiver was made by guardian or trustee before the retiree's death. See section 1201 of this volume regarding withdrawal of waiver. **Note:** Non-payment of compensation could occur at any time from the effective date of VA waiver through the month of death and is not limited to the month of death.

3002 DEATH GRATUITY

300201. General

A. Death gratuity may be payable when the retiree's death occurs on or after January 1, 1957, and during the 120-day period which begins the day after release from active duty or active duty for training. The Department of Veterans Affairs must certify entitlement to death gratuity.

B. Death gratuity is not payable for a member who retires for non-Regular service (age and service) unless the member was on active duty the day before retirement.

300202. Definitions

A. Basic pay. The monthly rate of active duty pay to which the deceased retiree was entitled on the last day of active duty or active and inactive duty training.

B. Additional pays. Special and incentive pays (including proficiency and hostile fire pay).

300203. Amount Payable

A. Deaths before August 2, 1990:

1. The amount payable is active duty basic pay for 6 months plus additional pays. Do not include allowances in the computation.

2. The amount payable cannot be less than \$800 nor more than \$3,000.

3. If applicable, include a 25-percent increase in basic pay in computing the amount of death gratuity. The increase in basic pay is authorized to personnel serving on a naval vessel in foreign waters who are retained beyond their active duty obligation because their services are essential to public interest.

B. Deaths on or after August 2, 1990. The amount payable is \$6,000.

C. Do not collect debts from death gratuity payments.

300204. Eligible Beneficiaries. Payment of a death gratuity is made to or in behalf of the deceased retiree's living survivors in this order:

A. Spouse. A man or woman is considered to be the spouse if legally married to the retiree on the date of the retiree's death. A waiver by a lawful spouse of the statutory right to death gratuity is without force or effect.

B. Children in Equal Shares. The term children includes (regardless of age or marital status):

1. Legitimate child

2. Legally adopted child

3. Stepchild, if such child is a member of the deceased member's household

4. Illegitimate child (See subparagraph 300207.A.4.,below.)

C. Designated Relatives. The retiree must have designated the relatives in writing before death. Authorized designations may be only one or both of the retiree's parents, brothers or sisters, or any combination thereof, including those of half-blood and those through adoption. In the absence of a written designation on file, or any evidence to the contrary, it is deemed that a designation has not been made.

D. Parents or Persons in Loco Parentis. In equal shares.

E. Brothers and Sisters. This includes those of half-blood and those through adoption in equal shares. Should a survivor die before receiving the amount to which entitled, the amount is paid to the then living survivor or survivors next in order of precedence. If there are no survivors, death gratuity is not payable to any other person.

300205. Determinations Affecting Entitlement

A. Death as Lawful Punishment. No death gratuity is payable in the case of a retiree whose death is the result of a lawful punishment for a crime or military offense, except when such death was inflicted by any hostile force with which the Armed Forces of the United States was engaged in armed conflict.

B. Member Killed by Beneficiary. No death gratuity is payable to a beneficiary or survivor who kills a retiree, unless there is evidence that clearly absolves the beneficiary of any felonious intent.

300206. Erroneous Payment. An erroneous payment of death gratuity is one made to a person clearly not entitled to that payment because of administrative error, rather than because of statements of record made by the retiree.

A. Make a second payment to the rightful beneficiary when the error resulted from improper maintenance of records or administrative negligence. Do not delay this payment pending recovery of the erroneous payment from the ineligible recipient.

B. Do not make a second payment of death gratuity to a different person if the original payment was based on statements of record made by the retiree, and the government has no reason to doubt the beneficiary's status was as stated.

300207. Documentary Evidence

A. In some cases, the beneficiary must furnish proof of relationship:

1. Lawful Spouse. Documentation may be required to substantiate the marriage or proof of termination of prior marriages entered into by the beneficiary or deceased retiree.

2. Legally Adopted Child. A copy of adoption papers.

3. Stepchild. Information to prove that the child was a member of the deceased member's household.

4. Illegitimate Child. Documentation is required as proof that the retiree was the parent of the child, or a copy of the court order which ordered the parent to contribute to the child's support.

5. Designated Relative:

a. Documentary evidence that any marriage entered into by the deceased retiree has been terminated and a notarized statement that there are no living children.

b. Persons in loco parentis must furnish satisfactory evidence of the relationship as deemed necessary by the Military Department concerned.

B. Payments for minor children must be supported by custodianship documents or court orders of guardianship appointment.

3003 TAXABLE INCOME

300301. Taxability of Arrears of Retired Pay. Arrears of retired pay due the deceased retiree at time of death are taxable to the beneficiary who receives payment if they were taxable to the retiree. See Chapter 24 of this volume. The tax liability is computed in accordance with the Internal Revenue Code of 1954, as amended (reference (es)). The arrears of retired pay are not subject to federal income tax withholding.

300302. Taxability of Death Gratuity. Death gratuity payments are exempt from taxation.

300303. Issuance of TD Form W-2P. If no arrears of retired pay are paid, the retired pay activity issues one TD Form W-2P (Statement for Recipients of Annuities, Pensions, or Retired Pay) in the decedent's name. If arrears of retired pay are paid, an additional TD Form W-2P is issued to each beneficiary to whom the arrears were paid.