

General Counsel

**INVESTIGATING AND PROCESSING CERTAIN NONCONTRACTUAL CLAIMS
AND REPORTING RELATED LITIGATION**

BY ORDER OF THE DIRECTOR



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AUTHORITY: Defense Commissary Agency Directives Management Program is established in compliance with DoD Directive 5105.55, Defense Commissary Agency (DeCA), November 1990.

APPLICABILITY: This directive applies to all employees of the Defense Commissary Agency (DeCA) organizational components and support field operating activities.

MANAGEMENT CONTROL SYSTEM: The OPR has determined that this directive does not contain Management Control provisions that are subject to evaluations, testing, and other requirements of DeCAD 70-2 and as specified by the FMFIA.

HOW TO SUPPLEMENT: Lower echelon units may not supplement this directive.

DISTRIBUTION: This Directive is available on DeCA's Intranet.

SUMMARY: This directive provides guidance and instructions relating to the initial investigation and reporting of potential claims for loss or damage to personal property or for personal injury to patrons and others occurring in DeCA controlled facilities.

SUPERSEDES: DeCA Directive 80-11, July 1, 1992
OFFICE OF PRIMARY RESPONSIBILITY (OPR): HQ DeCA/GC
COORDINATORS: HQ DeCA/IG/FM/SA

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**INVESTIGATING AND PROCESSING CERTAIN NONCONTRACTUAL CLAIMS
AND REPORTING RELATED LITIGATION**

1. PURPOSE:

a. This DeCAD provides procedures for investigating and reporting claims and related litigation:

(1) By civilian and military personnel assigned to DeCA for property lost or damaged incident to service (31 U.S.C. 3701-3721).

(2) Based on negligence of civilian or military employees under the Federal Tort Claims Act, 28 U.S.C. 1346(b), 2402, 2671 thru 2680.

(3) In favor of the United States, other than contractual, for loss, damage, or destruction of real or personal property in the possession, custody, or control of DeCA.

b. This DeCAD is applicable to all DeCA activities. While baggers are not DeCA employees, because an attempt may be made to impute their negligence to DeCA or the United States, potential claims or litigation involving them will be investigated and reported in the same manner as actions involving DeCA.

2. DEFINITIONS:

a. **Civilian Personnel.** Civilian Employees of DeCA who are paid from appropriated funds. Baggers, vendors, or vendor stockers are not employees.

b. **Claim.** A signed written demand made for the payment of a sum certain. It does not include any obligations incurred in the regular procurement of services supplies, or equipment.

c. **Claimant.** An individual, partnership, association, corporation, country, state, territory, or its political subdivisions. Under some circumstances the term may include the claimant's legal representative; another authorized to act on a claimant's behalf; or someone who by subrogation assumes the legal rights of another, such as an insurance company who has paid the claimant's claim.

d. **Claims Officer.** The individual on a military installation, usually assigned to the host staff judge advocate (SJA) on Army, Air Force and Marine installations, or on Navy Bases, the Naval Legal Services Office (NLSO), who is responsible for processing claims for and against the Government.

e. **Incident to Service.** Loss or damage to personal property as a result of an employees service, e.g., damage to household goods shipped pursuant to a Government paid move.

f. **Litigation.** A civil action filed in a court. When filed against the Government it must normally be preceded by the filing of an administrative claim.

g. **Member of the Armed Forces.** Active duty officers and enlisted personnel of the military services.

h. **Negligence.** An act or omission which lacks the ordinary care a reasonably prudent person would have used under similar circumstances.

- i. **Personal Injury.** The term "personal injury" includes both bodily injury and death.
- j. **Property Damage.** Damage to, loss of, or destruction of real or personal property.

3. **TYPES OF CLAIMS:**

a. **Claims by DeCA Personnel for Property Lost or Damaged Incident to Service.** Most often, these claims involve the loss or damage to personal property such as that which arises from the shipment of household goods moved at Government expense. Claims of DeCA civilian and military personnel will be processed by the nearest claims office pursuant to DoD Directive 5515.10 and an MOU signed by the various service Claims Officers and the Secretary of Defense.

b. **Claims Under the Federal Tort Claims Act Arising From Negligence of DeCA Military or Civilian Personnel.** These claims normally come from civilians, who are not Government employees, military retirees and their dependents, or dependents of active duty military personnel for property damage or personal injury arising from the negligence of Government personnel. These claims should be filed with the Claims Officer who is assigned responsibility for the geographic area where the damage, loss or injury arose.

c. **Tort Claims in Favor of the United States for Damage to or Loss of or Destruction of DeCA Property, or Property in its Custody or Control.** When DeCA property, or property in its custody or control is damaged, lost, or destroyed, it is DeCA policy to attempt a monetary recoupment from the responsible party. Examples of this type of claim include automobile accidents, where a non-DeCA employee is at fault or the negligent damage of DeCA property (running into a fence around a CDC) by an individual, not an employee of DeCA.

d. **Claims Involving GSA Motor Pool System Vehicles.**

(1) Where a motor pool system vehicle issued to a DeCA activity is involved in an accident giving rise to a claim under the Federal Tort Claims Act, the claim will be handled pursuant to subparagraph c above.

(2) In the event of damage to a motor pool system vehicle that is not due to the fault of the operator, the report will be submitted to GSA's Regional Counsel for the region that issued the vehicle. Damages to motor pool system vehicles caused by negligence of a vehicle operator employed by DeCA or caused by the negligence or misconduct of any other officer or employee of DeCA are reimbursed to General Services Administration (GSA). The determination affixing responsibility will be made by the General Counsel, DeCA after considering the views of GSA.

4. **RESPONSIBILITIES:**

a. A person assigned to the Office of General Counsel will conduct initial claims investigations arising at HQ DeCA and DeCA Field Operating Activities.

b. Region Directors will assign a senior representative to conduct initial claim investigations arising at their headquarters.

c. Store Directors and the Heads of other DeCA activities will themselves conduct initial claims investigations arising at their facilities or assign a senior representative to do so.

d. The individual assigned to conduct the initial claims investigation is responsible for the expeditious conduct of all investigations and the processing of required reports. To ensure prompt

investigation of every incident while witnesses are available, and before damage has been repaired, the duties of personnel assigned to conduct the initial claims investigation will ordinarily have priority over any other assignments they may have.

5. **INITIAL CLAIMS INVESTIGATION:** An initial claims investigation will be conducted immediately following a reported accident. If the Store Director/Head of other DeCA activity, or the designated initial claims investigator is not present, the next senior management official will respond to the location of the accident and assume responsibility for conducting the initial claims investigation. Investigate all reported accidents even if the person declines medical attention or says he or she is not injured. The initial claims investigator will make a written report of his or her findings, which may be combined with other available accident reports. These should not be safety reports. Most often, injuries occur because of a "slip and fall" and the items listed below reflect that probability. However, this guidance may equally apply to the investigation of other personal injury or property damage accident. At a minimum, the initial claims investigation will include:

- a. A listing of the names, addresses, and phone numbers of all witnesses. Include both commissary employees and customers.
- b. If feasible, ask witnesses to write statements (dated and signed), or at least make a summary of their comments.
- c. Identify the employee responsible for the area where the accident occurred.
- d. Ask the injured person what happened, and make notes of what he or she says. If there are serious injuries or medical attention is required, use discretion in determining whether questioning is appropriate. The injured person may also be asked for a written statement if it appears feasible.
- e. Ask the injured person and the witnesses exactly where the fall occurred and examine the area carefully. Describe the condition of the floor. Have witnesses also describe it. Ask witnesses if they saw anything on the floor before the accident. Look at the bottom of the injured person's shoe and describe what you observe.
- f. If photographs are taken, take distance shots for orientation, and progressive close-ups. Do not use distance shots if the entire area is littered. In that case, just use close-ups.
- g. Draw a diagram (crude if necessary) of the aisle or section where the fall occurred, and note the exact place where the fall occurred.
- h. If there was water or a foreign substance present on the floor, determine where it came from. Ask witnesses. Determine how and why the substance got on the floor, and especially, how long it had been there.
- i. Ask witnesses if they noticed the injured person had difficulty walking before the fall. Ask if the injured person was pushing a cart or just walking around when the fall occurred.
- j. Identify what procedures were in effect to routinely inspect and clean the floors, and describe them. Attach copies of any written procedures.
- k. If there is a custodial contractor responsible for cleaning up the area of the fall, list the company's name, address, which employees were on duty, when they knew of the spill, and why it was not promptly cleaned up. NOTE: Never assume or state that the custodial service is at fault.

l. If the person who fell was elderly, obese, frail, handicapped, walks with a cane, or has or says he or she had a bad knee, bad back, or other medical ailment before the fall, or if the person is obnoxious or argumentative, take particular care to do a thorough investigation. If other persons have knowledge of an injured person's prior injuries or illness, be sure to obtain their signed statement.

m. If comments are put in the accident report about what happened, make sure it is clearly stated whose comments they are. For example, specify if it is the investigator's opinion or the injured person's version about what happened. While comments of an injured person must be noted, don't write them as though they represent what in fact happened.

n. Whenever deemed necessary make telephonic notification to the host Claims Officer to determine whether or not assistance can be provided.

6. **PROHIBITED ACTS:** DeCA personnel will:

a. Never admit liability (fault) or indicate that the Government will pay medical or any other bills.

b. Not represent or aid any claimant, or potential claimant, in the prosecution or support of any claim against the United States. This does not, upon inquiry by a potential claimant, prohibit his or her referral to the host Claims Office.

c. Not receive any gratuity, share, or interest from any claim, except a claim properly asserted in their own names.

7. **DAMAGE TO DeCA PROPERTY:**

a. When DeCA property is damaged, the head of the DeCA activity involved will forward a report of the incident to the General Counsel, DeCA, who will determine whether or not a claim in favor of the Government is appropriate. If a claim is filed, it must be in writing and:

- (1) Reference the statutory right to collect.
- (2) Demand payment or restoration of the property.
- (3) Describe the damage.
- (4) Set forth the date and place of the incident.

b. The General Counsel, DeCA, may:

(1) Settle, compromise, suspend, or terminate action on claims for \$20,000.00 or less and accept full payment on any claim.

(2) Where payment in full is not received after reasonable efforts have been made to collect the claim administratively, refer the case to the U.S. Attorney.

(3) If the amount of the claim is less than \$250; or the record clearly shows that the debtor is unable to pay or cannot be located, the file may be closed and the debt treated as an uncollectable which does not have to be referred to the General Accounting Office.

c. If, at any stage of a claim being processed under this paragraph, a claim is filed against the Government arising out of the same incident, or it becomes apparent that one will be filed, the claim in favor of the Government will be treated as a counterclaim, and included in the report filed in accordance with paragraph 8 of this DeCAD.

d. Collections for loss, damage, or destruction to surcharge funded property will be deposited to the "Surcharge Collections" account. Collections from appropriated fund property are deposited to the US Treasury Miscellaneous Receipts Account.

8. REPORTING LEGAL PROCEEDINGS:

a. A copy of the initial claims investigation report will be forwarded to the host Claims Officer. A copy of the report will also be forwarded to the General Counsel, DeCA.

b. All documents, received by any persons or activity of DeCA, related to a claim covered by this DeCAD or involving an incident which may give rise to a claim covered by this DeCAD will be promptly referred to the host Claims Officer. A copy of the documents will also be forwarded to the General Counsel, DeCA.

c. Any member of the armed forces or any civilian employee of DeCA against whom a civil action or proceeding is brought for property damage or personal injury on account of official activity (e.g., automobile accident) should request representation in accordance with DeCAD 80-4. If the civil action or proceeding also involves a claim, it must also be referred to the installation Claims Officer.