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COMDTINST 1754.16
Jul 07 2005

COMMANDANT INSTRUCTION 1754.16

Subj: U. S. COAST GUARD TRANSITIONAL COMPENSATION FOR ABUSED DEPENDENTS

Ref: (a) 10 U.S.C. § 1059
(b) Paragraph 2 (16), Department of Homeland Security Delegation No. 0170.1
(c) U. S. Coast Guard Pay Manual, COMDTINST M7220.29A

1. PURPOSE. To implement policy, assign responsibilities, and prescribe procedures pursuant to references (a) and (b) for the payment of monthly transitional compensation to dependents of Coast Guard members separated for dependent abuse.
2. ACTION. Area and district commanders, commanders of maintenance and logistics commands, commanding officers of headquarters units, assistant commandants for directorates, Judge Advocate General, and special staff offices at Headquarters shall ensure compliance with the contents of this Instruction. Internet release is authorized.
3. DIRECTIVES AFFECTED. This Instruction supersedes Chapter 10.L of reference (c).
4. DEFINITIONS.
 - a. The term “dependent abuse offense” means a criminal offense against the person of the spouse or dependent child. Examples include, but are not limited to, sexual assault, rape, sodomy, assault, battery, attempted murder, and manslaughter.
 - b. A “dependent child” is an unmarried child, including an adopted child or a stepchild, who resided with the member at the time of the dependent-abuse offense resulting in the separation of the member and is:
 - (1) Under 18 years of age; or

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- (2) 18 years of age or older and is incapable of self-support because of a mental or physical incapacity that existed before the age of 18 and who was, at the time a punitive or other adverse action was executed in the case of the former member, dependent on the member for over one-half of the child's support; or
 - (3) 18 years of age or older but less than 23 years of age, is enrolled in a full-time course of study in an institution of higher learning and who was, at the time a punitive or other adverse action was executed in the case of the former member, dependent on the member for over one-half of the child's support; or
 - (4) The status as a "dependent child" is determined as of the date of the member's conviction of the dependent-abuse offense or the date of the member's administrative separation from active duty, whichever is applicable.
- c. A "dependent-abuse offense" is conduct by an individual while a member of the Coast Guard on active duty for more than 30 days and:
- (1) Involves abuse of the member's spouse or dependent child; and
 - (2) Is a criminal offense defined by 10 U.S.C. §§ 801-940, or other criminal code applicable to the jurisdiction where the act of abuse was committed.
- d. The term "spouse" includes "former spouse" where appropriate. The term "member" includes "former member" where appropriate.

5. ELIGIBILITY.

- a. Transitional compensation payments are authorized for dependents of a Coast Guard member who has been on active duty for more than 30 days and:
- (1) Is convicted of a dependent-abuse offense that results in the member being:
 - (a) Separated from active duty pursuant to a sentence of a court-martial; or
 - (b) Forfeiting all pay and allowances pursuant to a sentence of a court-martial.
 - (2) Is administratively separated from active duty in accordance with applicable regulations if the basis for separation includes a dependent-abuse offense.

6. PAYMENTS.

- a. Recipients. Payments to abused family members are made as follows:
- (1) If the member was married when the dependent-abuse offense occurred, payment shall be made to the eligible spouse to whom the member was married at that time, including an

amount for each, if any, dependent child of the member, defined in paragraph 4. b., who resides in the same household as the spouse.

- (2) If there is an eligible spouse and if there is a dependent child of the member who does not reside in the same household as the eligible spouse, payments shall be made to both the eligible spouse and each dependent child of the member who does not reside in the household of the member or spouse.
- (3) If the spouse is ineligible to receive payment under the forfeiture provisions of paragraph 8.a., 8.b., or 8.c. (that is remarriage, cohabitation with the member separated for the dependent-abuse offense, or active participation in the dependent-abuse offense), payments shall be made to each dependent child of the member who does not reside in the household of the member or spouse.
- (4) If there is no eligible spouse for reasons other than those in paragraph 8.a, 8.b., or 8.c. (for example, the member was not married at the time the dependent-abuse offense occurred), payments will be made to each dependent child of the member who does not reside in the household of the member.
- (5) If a recipient is incapable of handling his or her own personal affairs, payments may be made to a court appointed guardian on behalf of the recipient. In the case of a dependent child under 18 years of age, payments may be made only to a court-appointed guardian or a natural parent (who is not a spouse of the member), if the natural parent has legal custody of the dependent child.

b. Commencement and Duration of Payment.

- (1) Payment of transitional compensation in the case of a member convicted by a court-martial for a dependent-abuse offense, shall commence:
 - (a) The date the court-martial sentence is adjudged, if the sentence includes a dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances; or
 - (b) If there is a pretrial agreement that provides for disapproval or suspension of the dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances, as of the date of approval of the court-martial sentence by the convening authority if the sentence, as approved, includes an unsuspended dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances.
- (2) Payment of transitional compensation in the case of a member being considered for administrative separation for dependent abuse shall commence when competent authority approves the member's administrative separation and issues orders directing separation from active duty.
- (3) Concurrent payment of transitional compensation and waived forfeitures is authorized in the case of a member facing a punitive discharge pursuant to a court-martial sentence.

- (4) In the case of payment of transitional compensation solely by reason of a total forfeiture of pay and allowances pursuant to a sentence of a court-martial, payment of transitional compensation shall not be made for any period for which an order:
 - (a) Suspends, in whole or part, that part of a sentence that includes forfeiture of the member's pay and allowance; or
 - (b) Results in continuation, in whole or part, of the member's pay and allowances.
- (5) The duration of transitional compensation payments will be 36 months except if, as of the starting date of payment, the unserved portion of the member's obligated active duty service is less than 36 months; then, the duration of payment will be the greater of the unserved portion or 12 months.
- (6) For enlisted members, the "obligated active duty service" will be the time remaining on their term of enlistment. For officers, the "obligated active duty service" will be indefinite unless the officer has a date of separation established, then it will be the time remaining until the date of separation.

c. Calculating Payment Amount.

- (1) Monthly payments to a spouse will be at the rate in effect for the payment of Dependency and Indemnity Compensation under 38 U.S.C. § 1311 (a). If the spouse has custody of a dependent child or children of the member, the monthly payments to the spouse will be increased for each child by the amount under 38 USC § 1311 (b). If monthly payments are made to a child or children pursuant to paragraphs 7.a.(2), (3) or (4) above, such payments will be paid in equal shares at the rate in effect under 38 USC § 1313.
- (2) Monthly payments will be prorated when payments start or stop in the middle of a month.
- (3) When calculating payments for dependent children, if the monthly payment amount does not divide evenly, the youngest child will receive the odd cent.
- (4) If the recipient dies, arrears of pay will not be paid.

d. Cessation of Payments.

- (1) If a member is adjudged a dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances as a result of a conviction for a dependent-abuse offense, and such punishment is later disapproved, remitted, set aside, suspended, or mitigated to a lesser punishment, any payment of transitional compensation that has commenced on the basis of such adjudged punishment shall cease.
- (2) If administrative separation of a member from active duty is proposed on a basis that includes a dependent-abuse offense and the proposed administrative separation is

disapproved by competent authority under applicable regulations, payment of transitional compensation in such cases shall cease.

- (3) Cessation of payments under subparagraphs (1) or (2) shall be effective as of the first day of the first month following the month in which Personnel Service Center (PSC) notifies the recipient in writing that payment of transitional compensation will cease.
- (4) The recipient will not be required to repay amounts of transitional compensation received before the effective date of cessation, except as necessary to recoup any amount that was erroneous when paid.

7. FORFEITURE.

- a. Remarriage. If a former spouse receiving payments remarries, payments terminate as of the date of the remarriage. Payments received after remarriage are erroneous payments. Payment will not be renewed if the remarriage is terminated. A dependent child not living in the same household as the remarried spouse or member shall remain eligible for transitional compensation payments and benefits.
- b. Cohabitation. If the member resides in the same household as the spouse or dependent child to whom compensation is otherwise payable under this section, payment will terminate as of the date the member begins residing in the household. Once payment is terminated for this reason, payment will not resume if the member subsequently moves out of the household. Compensation paid to the dependent spouse prior to the member residing in the household shall not be recouped.
- c. Active participant. If the victim was a dependent child, and the spouse has been found by the cognizant Maintenance and Logistics Commander to have been an active participant in the conduct constituting the dependent-abuse offense, or to have actively aided or abetted the member in the abuse against the dependent child, the spouse or dependent child living with the spouse will not be paid transitional compensation.
- d. Notification. The spouse is required to notify the Coast Guard Personnel Service Center (PSC) within 30 calendar days of remarriage or the date that the member began residing with the spouse or dependent child. Dependent children, or if applicable, the legal guardian, are required to notify PSC within 30 calendar days after the member or ineligible spouse begins to reside in the same household. The PSC address is as follows:

Commanding Officer (RAS)
U.S. Coast Guard
Personnel Service Center
444 S. E. Quincy St.
Topeka, KS 66683-3591

- 8. ANNUAL CERTIFICATION. The spouse is required to annually certify that he or she has not remarried and is not residing with the member by completing a certificate of eligibility issued by PSC. The certificate of eligibility is annually sent to the spouse by PSC from the date payments

begin. Dependent children (or, if applicable, the legal guardian) are required to annually certify that they are not cohabitating with the member or ineligible spouse by completing the certificate of eligibility. The certificate of eligibility must be returned to PSC within 60 days to prevent suspension of payments. PSC will notify Commandant (CG-1112) in a timely manner of recipients who are no longer eligible to receive payments as a result of not completing the annual certification.

9. PROCEDURE.

- a. The Health and Safety Directorate, Commandant (CG-11), shall develop, publish, and maintain this Instruction and ensure compliance.
- b. Integrated Support Command and Headquarters Support Command Work Life Staffs shall ensure wide dissemination of information about transitional compensation to public affairs offices, staff judge advocates, Coast Guard Investigative Service (CGIS), Military Medical Treatment Facilities, and Chaplain Offices.
- c. The Maintenance and Logistics Commanders shall:
 - (1) Designate a judge advocate to serve as the Transitional Compensation Coordinator within their legal office;
 - (2) Approve eligible requests by signing the “Approving Official Certification” in Item 22 of Application for Transitional Compensation, DD Form 2698; or
 - (3) In disapproved cases, ensure the spouse is notified in writing of the reason for disapproval (remarriage, cohabitation, active participation in the abuse, etc.) and that he or she has 10 calendar days from the mailing of the notice to respond in writing; and
 - (4) If the 10-day time limit is met, consider the response in a new determination of whether or not to approve transitional compensation.
- d. The Transitional Compensation Coordinator shall:
 - (1) Ensure the spouse or dependent-child (or legal guardian as appropriate), is provided DD Form 2698;
 - (2) Consult with the member’s unit commanders and cognizant field legal office for information necessary to determine the validity of the application, authorized recipients, and duration of payments;
 - (3) Enter all information on DD Form 2698, except Items 12, 22a, 24, and 25;
 - (4) Ensure the applicant completes Item 12 of DD Form 2698 by signing and dating Items 12.a. and 12.b.;
 - (5) Ensure the applicant submits a voided check to facilitate direct deposit of payments;

- (6) Review the application for legal sufficiency and prepare written legal review for the cognizant Maintenance and Logistics Commander;
- (7) Deliver the legal review and DD Form 2698 to the cognizant Maintenance and Logistics Commander;
- (8) In approved cases, fax the completed DD Form 2698 and a letter of certification, such as the convening authority action or, in the case of administrative separation, the letter of notification, to:
 - (a) The Retiree and Annuitant Services Branch at PSC;
 - (b) The DEERS Project Officer, Commandant, Office of Military Personnel, Commandant (CG-1222); and
 - (c) The Family Advocacy Program Manager, Commandant, Office of Work-Life (CG-1112).
- (9) Retain a copy of DD Form 2698 and applicable letter of certification for 3 years and subsequently notify PSC and the DEERS Project Officer of any action that affects payment of transitional compensation.

e. The DEERS Project Officer (CG-1222) shall enter eligible dependents into DEERS to enable recipients to receive military identification cards in accordance with Identification Cards for Members of the Uniformed Services, Their Family Members and Others Eligible Personnel, COMDTINST 5512.1 (series).

f. PSC, Retiree and Annuitant Services Branch, shall:

- (1) Complete Item 25 of DD Form 2698 as the Fund Cite Approving Official;
- (2) Facilitate payments out of the Dependent Indemnity Compensation Fund to authorized recipients; and
- (3) Annually mail, from the date payments begin, a certificate of eligibility to recipients. If the certificate of eligibility is not returned within 60 days, suspend payments until receipt.

10. COORDINATION OF BENEFITS. A spouse may not receive payments under both 10 U.S.C. § 1059 (transitional compensation) and § 1408 (h)(1) (payment of retired pay in compliance with a court order). If a spouse is eligible for both, the spouse must elect which to receive.

11. COMMISSARY AND EXCHANGE BENEFITS.

- a. While receiving payments, recipients are entitled to the same commissary and exchange privileges as a dependent of a member of the Armed Forces on active duty for a period of more than 30 days.

- b. If a recipient is eligible or entitled to use the commissary and exchange stores and is also eligible or entitled under another provision of law, eligibility and entitlement will be determined under the other provision of law and not in accordance with this Instruction.

- 12. MEDICAL AND DENTAL BENEFITS. While receiving payments, recipients are entitled to receive the same medical and dental care, including mental health services, in facilities of the uniformed services as a dependent of a member of the Armed Forces on active duty for a period of more than 30 days.
- 13. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS. Environmental considerations were examined in the development of this Instruction and have been determined to be not applicable.
- 14. FORMS/REPORTS. Application for Transitional Compensation, Form DD 2698 (Jan 95), is available through the Family Advocacy Program, Commandant (CG-1112), or through USCG Forms.

PAUL J. HIGGINS /s/
Director of Health and Safety