



Department of Defense INSTRUCTION

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Administrative Reissuance Incorporating Change 1, January 16, 1997

USD(P&R)

SUBJECT: Transitional Compensation for Abused Dependents

- References:
- (a) Assistant Secretary of Defense (Force Management Policy) Memorandum, "Implementation of Transitional Compensation for Abused Dependents," January 24, 1995 (hereby canceled)
 - (b) Sections 801-940, 860(c), 1059, 1077, and 1408(h) of title 10, United States Code
 - (c) Sections 1311(a)(1), 1311(b), and 1313 of title 38, United States Code

1. PURPOSE

This Instruction:

- 1.1. Supersedes reference (a).
- 1.2. Implements policy, assigns responsibilities, and prescribes procedures under 10 U.S.C. Sec. 1059 (reference (b)) for the payment of monthly transitional compensation to dependents of members separated for dependent abuse.

2. APPLICABILITY AND SCOPE

This Instruction applies to:

- 2.1. The Office of the Secretary of Defense and the Military Departments (including Coast Guard when it is operating as a Service in the Navy).
- 2.2. Dependents of members of the Armed Forces who have been on active duty for more than 30 days and who, *after November 29, 1993, are:*

2.2.1. Separated from active duty under a court-martial sentence resulting from a dependent-abuse *offense*;

2.2.2. Administratively separated from active duty if the basis for separation includes a dependent-abuse *offense*; or

2.2.3. *Sentenced to forfeiture of all pay and allowances by a court-martial which has convicted the member of a dependent-abuse offense.*

3. DEFINITIONS

3.1. Dependent-Abuse Offenses. A dependent-abuse offense is conduct by an individual while a member of the Armed Forces on active duty for a period of more than 30 days that involves abuse of the then-current spouse or a dependent child of the member and that is a criminal offense defined by 10 U.S.C. Secs. 801-940 (reference (b)) or other criminal code applicable to the jurisdiction where the act of abuse is committed. The term "involves abuse of the then-current spouse or a dependent child" means that the criminal offense is against the person of that spouse or a dependent child. Crimes that may qualify as "dependent-abuse offenses" are ones such as sexual assault, rape, sodomy, assault, battery, murder, and manslaughter. (This is not an exhaustive or exclusive listing of dependent-abuse offenses, but is provided for illustrative purposes only.)

3.2. Dependent Child. An unmarried child, including an adopted child or a stepchild, who was residing with the member at the time of the dependent-abuse offense, and who is:

3.2.1. Under 18 years of age;

3.2.2. Eighteen 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 is (or, when a punitive or other adverse action was carried out on the member, was) dependent on the member for over one-half of the child's support; or

3.2.3. Eighteen 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 approved by the Secretary of Defense and who is (or, when a punitive or other adverse action was carried out on the member, was) dependent on the member for over one-half of the child's support.

3.3. Member. The term "member" includes "former member," where appropriate.

3.4. Spouse. The term "spouse" means a dependent spouse and, where appropriate, includes "former spouse."

4. POLICY

It is DoD policy to make monthly payments of transitional compensation and provide other benefits described herein for dependents of members who are separated for dependent abuse.

5. RESPONSIBILITIES

5.1. The Assistant Secretary of Defense for Force Management Policy shall develop, publish, and maintain this Instruction and ensure compliance.

5.2. The Secretaries of the Military Departments shall appoint representatives to coordinate requests for transitional compensation, to approve requests, forward them to the Defense Finance and Accounting Service (DFAS), and notify DFAS of any action that affects payment of transitional compensation.

5.3. The Under Secretary of Defense (Comptroller)/Chief Financial Officer shall ensure that DFAS shall process payment requests forwarded by Service representatives.

6. PROCEDURES

6.1. Recipients of Payments. Payments shall be made to dependents described in paragraphs 2.2.1. or 2.2.2., above, as follows:

6.1.1. If the member was married when the offense occurred, payment shall be made to that spouse.

6.1.2. If there is a spouse who is ineligible to receive payment because of remarriage (under paragraph 6.3.1., below), cohabitation (under paragraph 6.3.2., below), or active participation (under paragraph 6.3.3., below), payments shall be made to each dependent child of the member who does not reside in the household of the member or the spouse.

6.1.3. If there is no eligible spouse for reasons other than those in paragraphs 6.3.1. through 6.3.3., below (for example, because the member had no dependent spouse or the spouse has died), payments shall be made to the dependent children of the member who do not reside in the household of the member.

6.1.4. For paragraphs 6.1.2. and 6.1.3., above, status as a "dependent child" is determined as of the date on which the member is convicted of the offense or as of the date of the member's administrative separation, whichever is applicable.

6.1.5. If a recipient is incapable of handling his or her own affairs, payments may be made only to a court-appointed guardian. For 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 legally has custody of the dependent child.

6.2. Payments

6.2.1. Commencement and Duration

6.2.1.1. Payment shall commence on the date: the person acting under 10 U.S.C. Sec. 860(c) (reference (b)) approves the court-martial sentence that includes a dismissal, dishonorable discharge, or bad-conduct discharge; or the member's commander starts administrative separation action. The duration of payments shall 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, the duration of payment shall be the greater of the unserved portion or 12 months.

6.2.1.2. No payment shall be made for any period before *November 30, 1993*.

6.2.1.3. For enlisted members, the "obligated active duty service" shall be the time remaining on their terms of enlistment. For officers, the "obligated active duty service" shall be indefinite unless an officer has a date of separation established, then it shall be the time remaining until the date of separation.

6.2.2. Amount

6.2.2.1. Monthly payments to a spouse shall be at the rate in effect for the payment of dependency and indemnity compensation under 38 U.S.C. Sec. 1311(a)(1) (reference (c)). If the spouse has custody of a dependent child or children

of the member, the amount of monthly compensation to the spouse shall be increased for each child by the amount in effect under 38 U.S.C. Sec. 1311(b) (reference (c)). If there is no eligible spouse, compensation paid to a dependent child or children under 6.1.2. or 6.1.3., above, shall be paid in equal shares at the rate in effect under 38 U.S.C. Sec. 1313 (reference (c)).

6.2.2.2. Payments shall be prorated for months when payments start or stop in the middle of a month.

6.2.2.2.1. When paying children, if the payment amount does not divide evenly, the youngest child shall receive the odd cent.

6.2.2.2.2. If recipient dies, arrears of pay shall not be paid.

6.2.3. Cessation of Payments

6.2.3.1. Any payment of transitional compensation that has started under paragraph 6.2.1., above, shall stop effective as of the first day of the first month following the month in which the Secretary concerned notifies a recipient in writing that payment of transitional compensation shall cease because of subparagraph 6.2.3.1.1. or 6.2.3.1.2., below.

6.2.3.1.1. The member is sentenced by a court- martial to receive punishment that includes a dismissal, dishonorable discharge, or bad conduct discharge as a result of a conviction by a court- martial for a dependent-abuse offense and such punishment is remitted, set aside, or mitigated to a lesser punishment that does not include any such punishment.

6.2.3.1.2. The 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.

6.2.3.2. The recipient shall not be required to repay amounts of transitional compensation received before the effective date of cessation determined under subparagraph 6.2.3.1., above (except as necessary to recoup any amount that was erroneous when paid).

6.3. Forfeiture Provisions

6.3.1. Remarriage. If a spouse receiving payments remarries, payments

terminate as of the date of the remarriage. Payment shall not be renewed if such remarriage is terminated. If the payments to the spouse terminate due to remarriage and there is a dependent child not living in the same household as the spouse or member, payments shall be made to the dependent child, as in paragraph 6.1.2., above.

6.3.2. Cohabitation

6.3.2.1. If the member resides in the same household as the spouse or dependent child to whom compensation is otherwise payable under this Instruction, payment shall terminate as of the date the member begins residing in such household.

6.3.2.2. Once terminated under subsection 6.3.2.1., above, payment shall not be resumed.

6.3.2.3. Compensation paid in accordance with this Instruction before the member resides in the household shall not be recouped.

6.3.3. Active Participant. If the victim was a dependent child, and the spouse has been found by competent authority designated by the Secretary concerned to have been an active participant in the conduct constituting the criminal offense or to have actively aided or abetted the member in such conduct against that dependent child, the spouse, or dependent child living with the spouse shall not be paid transitional compensation.

6.3.4. Annual Certification. The spouse must notify the DFAS within 30 days of the date of remarriage or the date the member begins residing in the same household as the spouse or dependent child. The spouse (or if applicable, the individual receiving payments under paragraph 6.1.5., above) shall annually certify to DFAS on a Certificate of Eligibility (COE) that he or she has not remarried and has not been cohabitating with the member. Dependent children (or if applicable, the individual receiving payments under paragraph 6.1.5., above) shall annually certify via the COE process that they are not cohabitating with the member or ineligible spouse.

6.4. Coordination of Benefits. A spouse may not receive payments under both sections 1059 and 1408(h) of 10 U.S.C. (reference (b)). If a spouse is otherwise eligible for both, the spouse must elect which to receive.

6.5. Source of Funds. Transitional compensation must be paid from operations and maintenance funds.

6.6. Application Procedures. An individual must initiate a request through a

Service-appointed representative. The Service representative shall coordinate the collection of information necessary to determine the validity of the claim, the recipient(s), and duration of payments using DD Form 2698, "Application for Transitional Compensation." The Service representative shall approve payment and forward the application to DFAS at the following address:

DFAS-DE/FRB
6760 East Irvington Place
Denver, CO 80279-6000

Facsimile numbers:
DSN: 926-4667
COMM: (303) 676-4667

The DFAS point of contact is DFAS-DE/FRBS, at DSN: 926-4514 or COMM: (303) 676-4514.

6.7. Commissary and Exchange Benefits

6.7.1. Recipients are also entitled to use commissary and exchange stores while receiving their payments. They are allowed 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.

6.7.2. If a recipient eligible or entitled to use the commissary and exchange stores under paragraph 6.7.1., above, is also eligible or entitled under another law, eligibility and entitlement shall be determined under the other law and not paragraph 6.7.1., above.

6.8. Medical Benefits

6.8.1. *A dependent of a member who has been separated from a Uniformed Service due to a dependent-abuse offense may receive medical or dental care in facilities of the Uniformed Services or through the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). Receipt of the medical or dental care is subject to the limitations in paragraphs 6.8.2. and 6.8.3., below.*

6.8.2. *Eligible dependents of a member who receives a dishonorable or bad-conduct discharge, is dismissed as a result of a court-martial, or is administratively separated from a Uniformed Service as a result of a dependent-abuse*

offense are entitled to medical or dental care for problems associated with the abuse. Entitlement to such care is limited to a period of one year following the member's separation from the Uniformed Service, and eligibility will be granted only upon request to the Secretary of the Military Department concerned. The determination of whether an offense involved abuse of a dependent shall be made by the Secretary of the Military Department concerned.

6.8.3. Eligible dependents of a member who is retirement eligible, but who loses eligibility for retired pay because of dependent-abuse misconduct, may receive medical and dental care in accordance with section 1408(h) of 10 U.S.C. (reference (b)).

7. EFFECTIVE DATE:

This Instruction is effective immediately.



F. Pang
Principal Deputy Under Secretary of Defense
For Personnel and Readiness