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DEATH, DETERMINATION OF

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AG-KE

Determination of Death of Civilian
Employees.

Legal Officer

Director, Rec Pers Div

9 September 1945

THRU:

Civilian Personnel
I & H Section
Executive

1. In accordance with your oral instructions, the following views are submitted as to the dates on which benefits under the Missing Persons Act may be terminated in the case of actual or presumed death of Filipino civilian employees occurring in the Philippine Islands.

2. The recent opinion of the Judge Advocate General (SPJGA 1945/5838, 25 July 1945) provides that:

"1. * * * The Commander-in-Chief * * * may legally be authorized to determine that in cases of death in the Philippine Islands of War Department civilian personnel or Philippine Army personnel, a casualty status within section 2 of the Missing Persons Act * * * shall not exist beyond (a) the date of receipt by next of kin from local officials of notification of death, or the date of receipt of such notification by General Headquarters, Army Forces, Pacific, whichever is earlier, or (b) the date of actual death where the next of kin were present with such personnel at the time of death.

"2. * * * Notice or knowledge of death, acquired by the next of kin under circumstances other than those described in paragraph 1 above, is not legally sufficient to justify a denial of a casualty status within section 2 of the act, as amended, for any period prior to a determination of death or receipt of a report of death by the War Department or its authorized representative."

3. The term "were present with such personnel at the time of death" as above used, is considered to embrace not only the situation where the next of kin were present at the actual death but also the situation where the kin saw the body, attended the funeral, or otherwise had direct knowledge of the fact that the individual had died.

4. There are three means by which death is established for the purposes of the Act: Report of death; determination of death; and finding of death.

DECLASSIFIED
Authority MMD 883078

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(Continued)

5. A report of death consists of information "deemed to establish conclusively death of person" and is normally an official report rendered through military or international channels.

6. Where death is established by a report of death, the benefits under the Act normally terminate on the date "such evidence * * * is evaluated and found sufficient to establish the fact and times of death by the official having delegated authority to make such determination." (Par. 7 a (1) and 6 a (2), Policy Ltr, WD Dep Bd, 27 Jan 45). However, in the case where next of kin were furnished notification of death by local officials, under the opinion of the JAG, 2 above, the C-in-C may use "The date of receipt by next of kin from local officials of notification of death," if it is earlier than the date of receipt of the report by C-in-C, as the date on which benefits cease to accrue under the Act.

7. A determination of death is made upon a person absent in a casualty status when an official report of death is lacking but "when information and circumstances are deemed reasonably conclusive evidence of death and lead to no other logical conclusion." It may be made at any time when warranted by evidence.

8. As in the case of report of death, the benefits under the Act ordinarily cease to accrue, where a determination of death is made on the date the official authorized to make the determination evaluates the evidence and makes his finding (See authorities cited in 6 above). However, where the next of kin had notice or knowledge of the death of the civilian employee under the circumstances outlined in the JAG opinion, 2 above, the C-in-C may terminate the benefits under the Act as of the date the next of kin acquired such knowledge.

9. A finding of death is made at any time after the expiration of twelve months absence in any case of a person missing or missing in action "when information is received or a lapse of time without information is deemed to establish a reasonable presumption that the person in the missing status is no longer alive." It is the means of establishing death by presumption when "the evidence does not warrant official report of the fact and date of death."

DECLASSIFIED
Authority MND 8830 78

Legal Officer

THRU:

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9 Sept 1945

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I & R Section
Executive

(Continued)

"When a finding of death is made the date upon which death actually occurred is not attempted to be determined. The effect of the finding is that henceforth the person is presumed to be dead. Corollary to such presumption there must be an arbitrary date for termination of pay status and settlement of accounts. Such date is technically known as the "presumed date of death". If review and finding of death is upon expiration of twelve months in a missing status the 'presumed date of death' is required by law to be fixed as the date following such expiration; if finding of death results from a subsequent review the 'presumed date of death' shall be determined by the official making the finding and shall in the absence of special circumstances be the date such finding is made. In no case shall presumed date of death be subsequent to the date the finding is made or earlier than the day following expiration of twelve months absence." (Par 8, Policy Ltr WD Bd, 30 Jan 45) (Underscoring supplied).

10. When the casualty status is terminated by a finding of death, "the presumed date of death" terminates the accretion of benefits under the Act. This presumed date may not be earlier than the expiration of twelve months absence or subsequent to the date the finding is made. The cases of Filipino civilian employees disposed of by findings of death with "presumed date of death" as of this time will result in payments of benefits for over three years. Question is therefore presented as to whether or not their situation presents "special circumstances" justifying the C-in-C determining the "presumed date of death" at a time earlier than the ordinary date for finding it, namely, the date the finding is made; and if so, whether the C-in-C desires to establish a policy of using such earlier date.

11. Filipino civilian employees were in general not molested or prevented from returning to their homes and normal mode of life by the Japanese. Those who were confined or interned were released under the policy of amnesty by about August 1942. Where such an individual had not returned to his home or communicated his whereabouts within a year, his family would reasonably believe that he had died. However, these facts were not available to the War Department until the reoccupation of the Philippines. It is believed that these constitute "special circumstances" which would authorize the C-in-C determining, if he desired, "the presumed date of death" in case of Filipino civilian employees absent more than a year in a status of missing or missing in action, at a date earlier than the date such finding is made, but not earlier than one year after the beginning of the absence.

DECLASSIFIED
Authority MWD 8830 78

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(Continued)

12. From the foregoing, it appears that command policy will have to be determined for guidance in disposition of cases of deceased Filipino civilian employees as to the following:

a. Whether or not the opinion of the JAG permitting termination of benefits on the date the next of kin had notice or knowledge of death, will be followed in cases where it may be applied.

b. Whether or not in cases of findings of death an arbitrary date, (more than a year after beginning of absence but earlier than the date of making the finding) will be used to determine the "presumed date of death".

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