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Authority *AWD 883078*

LAST DATE ENTITLED TO PAY

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Authority *AND 883018*

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C O P Y

WDGAP 704 (7 Feb 45)

11 August 1945

MEMORANDUM FOR THE COMMANDING GENERAL, AFPAC (ATT: G-1 - PROJECT J):

SUBJECT: Casualty Administration in the Philippine Islands

1. a. Transmitted herewith is a copy of an opinion of The Judge Advocate General of the Army upon the legal aspects of the request for authority contained in Radiogram CINCAFPAC to WARTAG, C 22403, 29 June 1945. This request for authority has been approved by War Department Radiogram transmitted by the Assistant Chief of Staff, G-1, 11 August 1945.

b. In summary, you request authority to make determinations under the Missing Persons Act that a "missing" status ceases on the date of receipt of reliable notification of death of the serviceman by the next of kin, or upon the date of the receipt of such notification by GHQ, AFPAC, whichever is earlier. This authority is to be applicable only in cases in which service personnel died in the Philippines, during Japanese occupation or while otherwise in a Missing Persons Act status.

2. Typical cases in which such requested authority is desired to be applied were transmitted by Radiogram CINCAFPAC to WARTAG, C 31715, 8 August 1945.

FOR THE ASSISTANT CHIEF OF STAFF, G-1:

Incl:
Copy JAG Comment No. 2
dtd 25 Jul 45

(stamped) PETER SCHMICK
Colonel, GSC
Executive

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DOD Directive No. 52001.2
27 Sept 1968

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Authority *NAV 883018*

DISPOSITION FORM

File No. WDGAP 704 (7 Feb 45) SUBJECT: Termination of Pay of Deceased Filipinos
under the Missing Persons Act

TO JAG - For necessary action FROM G-1, WDGS DATE 7 July 1945 COMMENT NO. 1
Lt Col McConnell/mlj/3329

An opinion is desired as to whether it is legally possible, under the Missing Persons Act, as amended, to effectuate the policy set forth in the third paragraph of Radiogram C-22403 (Cm.In.28481) 29 June 1945, from the Commander in Chief, Army Forces, Pacific.

FOR THE ASSISTANT CHIEF OF STAFF, G-1:

/s/ Peter Schmick
Col, G.S.C.
Assistant Executive

Incls

Memo for A.C. of S., G-1 from
WDDE, dtd 5 Jul 45
Radiogram C-22403 (Cm.In.28481)

SPJGA 1945/5838

TO Asst Chief of Staff, G-1 FROM The Judge DATE 25 Jul 45 COMMENT NO. 2
War Dept, General Staff Advocate Capt Weintraub/77832
Rm 2E-928, The Pentagon General

1. It is the opinion of this office that the Commander in Chief, Army Forces, Pacific, 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 (act 7 Mar 1942, 56 Stat. 144), as amended (sec. 2, act 1 Jul 1944, 58 Stat. 679; 50 U.S.C. App. Sup. IV, 1002), shall not exist beyond (a) the date of receipt by the 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. It is the further opinion of this office that 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

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DOD Directive No. 5200.9
22 Sept 1958

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SPJGA 1945/5838

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. In connection with the grant or exercise of the authority described in paragraph 1, consideration is invited to the following circumstances: This office is informally advised by a representative of the Fiscal Director (Lt. Col. T. P. Corwin, ext. 4816) that, so far as he knows, the rate of pay of enlisted men of the Philippine Army during the period here involved has ranged from 16 pesos (\$9 in U. S. currency) per month for a private to 86 pesos (\$43 in U.S. currency) per month for a master sergeant. This office is informally advised by a representative of the Veterans Administration (Mr. Moore, ext. 476) that surviving widows, children, and dependent parents of members of the Philippine Army are eligible for benefits payable upon death; that the rate of such benefits in cases of service-connected death (sec. 5, act 19 Jul 1939, 53 Stat. 1070; 38 U.S.C. 472b; sec. 14, act 13 Jul 1943, 57 Stat. 558; 38 U.S.C., Sup. IV, 731) is \$50 per month for a widow, \$15 per month for the first child, \$13 per month for each additional child, not to exceed a total of \$100, and up to \$50 per month for dependent parents; that the rate of the mentioned benefits is not affected by the circumstance that the pay of members of the Philippine Army is considerably less than the pay of members of the Army of the United States; that, although the mentioned benefits ordinarily will not be paid retroactively to the day after the date of death except when application therefor is made within one year after death, such retroactive payment will be made in any case where a determination is made by the War Department of a casualty status within section 2 of the Missing Persons Act, as amended, and application for benefits is made within one year after the date of the report of death prepared by the Casualty Branch, Adjutant General's Office; that, however, retroactive entitlement to the mentioned benefits is subject to the limitations (a) that the benefits are not payable for any period during which the dependents are entitled to receive an allowance, allotment, or service pay of the deceased, and (b) that under section 5 of the act of 13 July 1943 (57 Stat. 555; 38 U.S.C., Sup. IV, 729) any person not a citizen of the United States who is located in enemy-held territory cannot receive payment for any period prior to the filing of a claim as provided by that act. The practical consequence of the mentioned informal views of the Veterans Administration in the situation here under consideration is this: that if a casualty status under section 2 of the Missing Persons Act, as amended, has been or is determined to have existed, and if it is determined by the War Department that entitlement to credit for pay and allowances terminated prior to the receipt by the War Department of a report of death or prior to a presumed date of death, dependents of the deceased who apply to the Veterans Administration for the mentioned death benefits within one year of the time of the mentioned report of The Adjutant General may receive for the period following the termination of entitlement to pay credit benefits which usually will be considerably in excess of the amount of the mentioned pay credit in the following cases: (a) where the dependents are citizens of the United States, or (b) where the dependents are not located in enemy-held territory.

FOR THE JUDGE ADVOCATE GENERAL:
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DOD Directive No. 5200.9
EZ Sept 1958

J. W. HUYSSOON
Colonel, JAGD
Chief of Military Affairs Division

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WAR DEPARTMENT

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PRIORITY

From: Commander in Chief, Army Forces, Pacific,
Manila, Philippines

To: War Department

Nr: C 22403

29 June 1945

Fm CINCAFPAC to WARTAG cite C 22403

Many cases have arisen in this theater in the administration of the Missing Persons Act in which the next of kin of War Department civilian personnel and Philippine Army personnel coming within the Act were present with them when such personnel died or received immediate notification of death through local civil officials.

Cite (project J) to assure reasonable and fair determinations, request authority to place into effect the following policy:

In cases in which such personnel died in the Philippines during Japanese occupation or while otherwise coming within the provisions of the Missing Persons Act it will be determined that the Missing Persons Act status ceases on the date of receipt of notification of death by the next of kin or the date of receipt of such notification by GHQ, AFPAC, whichever is earlier and pay and allowances ceased to accrue on that date. Date of death will be established by official records.

If this policy is contrary to law, request action be taken to amend the Missing Persons Act to permit the adoption of such policy. In view of number of cases pending, request reply at earliest practicable date.

End

ACTION: TAG

INFO: OPD

CM-IN-28461

(29 Jan 45)

DTG 291253Z

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DDI Directive No. 8200.9
22 Sept 1988

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