

## Claims Under Article 139 of the UCMJ

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Article 139 of the UCMJ allows commanders to investigate claims filed by victims of a wrongful taking or the willful destruction of property committed by soldiers and, if substantiated, to direct finance to pay the victim directly from the wrongdoer's pay. If an individual offender cannot be determined, Article 139 authorizes commanders to direct finance to withhold the pay of all members of a unit who were present at the scene of the incident. Article 139 is entirely separate and distinct from disciplinary action taken under other sections of the UCMJ.

### Proper Claimants:

Any Individual (Civilian or Service Member)

Business Entity

Government (State, Territorial or Local)

Non-Profit Organization

### Improper Claimants:

Appropriated Fund Entity

Non-Appropriated Fund (NAF) Entity

Person Against Whom Claims May be Filed: Claims may be filed against "members of the armed forces." Including:

Active duty personnel

Retired personnel who were on active duty when the claim was filed

Reserve and National Guard personnel when their duty status subjects them to the UCMJ

Claims Cognizable Under ART 139:

Property that is “Willfully Damaged.” This includes damage inflicted intentionally, knowingly, and purposefully without justifiable excuse. Also includes damage caused by riotous, violent, or disorderly acts, or by acts of depredation, or through conduct showing reckless or wanton disregard of the property rights of others. It does not include damage caused inadvertently or thoughtlessly through simple or gross negligence.

Property that is “Wrongfully Taken.” This includes any unauthorized taking or withholding of property with the intent to temporarily or permanently deprive the owner or person lawfully in possession of the property. It does not include breaches of fiduciary or contractual relationships unless the breach constitutes larceny.

NOTE: Contributory negligence by the claimant does not preclude an otherwise cognizable claim.

Claims Not Cognizable Under ART 139: Claims resulting from the following are not payable under ART 139:

Negligent acts or omissions.

Acts or omissions by military personnel who were acting within their scope of employment.

Conduct of reserve component personnel who were not subject to the UCMJ at the time of the offense.

Claims for personal injury or wrongful death.

Claims for theft of services – the loss must be tangible.

Subrogated claims.

Claims for indirect, or consequential, damages

Limitations:

**Time Limitations.** A claimant must file within 90 days of the incident giving rise to the claim unless the Special Court Martial Convening Authority (SPCMCA) acting on the claim determines there is good cause for delay. Good cause generally includes being unaware of Article 139 or the identity of the offender(s).

**Assessment Limitations.** A SPCMCA may authorize assessments not to exceed \$5,000. A GCMCA (General Court Martial Convening Authority) may authorize assessments not to exceed \$10,000. Only the Commander, U.S. Army Claims Service (USARCS), or designee, may authorize assessments in an amount greater than \$10,000 per incident.

**Procedure:**

**Form & Presentment of Claim.** The claim may be initially presented by the claimant, or an authorized agent, orally or in writing. The claim must be reduced to writing, within 10 days of oral presentment; it must request a specific sum in U.S. dollars; and it must be signed.

**Action Upon Receipt of Claim.** Any officer receiving claim will forward it within 2 working days to SPCMCA exercising jurisdiction over soldier(s) against whom claim is made. If claim is against soldiers under jurisdiction of more than one SPCMCA but same GCMCA, claim will be forwarded to GCMCA who will designate one SPCMCA to investigate and act on claim as to all soldiers involved. If claim is against soldiers under jurisdiction of more than one GCMCA, claim will be forwarded to SPCMCA whose headquarters is closest to the situs of the incident. If claim is against member of another military service, claim will be forwarded to that service's nearest major command (or equivalent).

**Action by the SPCMCA:**

If a claim appears cognizable, the SPCMCA shall appoint an Investigating Officer (IO) within 4 working days of the receipt of the claim. The command's Claims Judge Advocate may be the legal advisor for the IO.

If a claim does not appear to be cognizable, the SPCMCA may refer it for legal review within 4 working days. If the legal review determines that it is not cognizable, the SPCMCA may take final action disapproving the claim without appointing an IO.

**NOTE:** Any claim which is cognizable under both Article 139 (AR 27-20, Chapter 9) and AR 27-20, chapter 11, first must be considered under Chapter 9. If, however, the resolution of a chapter 9 claim would be unduly delayed and the claimant would suffer a financial hardship, the area claims office may process the claim under Chapter 11. If handled under Chapter 11, the claims office must inform the claimant of the responsibility to repay any overpayment to the government should the Chapter 9 claim later succeed.

**Action by the IO:**

Obtain briefing from a Claims Judge Advocate (CJA) or a Claims Attorney for guidance on legal and procedural questions. Notify soldier against whom claim is made. If soldier is AWOL and cannot be notified, claim may be processed in soldier's absence. If soldier desires and SPCMCA concurs, allow soldier opportunity to make voluntary restitution. In absence of full restitution, investigate using the informal procedures of AR 27-20, Chapter 9, as supplemented by AR 15-6, Chapter 4.

Obtain evidence and make findings independent of court-martial or adverse administrative action. Consider all relevant evidence, except what is forbidden by AR 15-6. Determine if claim is cognizable and meritorious and, if applicable, the amount to be assessed against each offender.

Standard of Proof. A preponderance of the evidence is necessary for a finding of pecuniary liability.

Valuation of Claimant's Loss. The measure of a loss usually is the repair or replacement cost for the same or a similar item. The Military "Allowance List Depreciation Guide" (ALDG) may be used to calculate depreciated replacement cost. The ALDG can be found on this web site at the "Claims Resources" page, Section III(1).

Within 10 working days of receipt (or longer if SPCMCA finds "good cause" for delay), submit written findings and recommendation through claims office to SPCMCA. Findings should address each condition for payment listed in DA PAM 27-162, Paragraph 9-7(f)(5). Ensure a copy of the completed investigation and an opportunity to respond is provided to soldier(s) against whom claim is made.

A SPCMA is never bound by findings of an IO.

**NOTE:** Action on a claim should never be delayed because criminal charges arising from the same incident are pending. Prompt resolution of all Article 139 claims is essential.

**Legal review:** SPCMCA will forward action to servicing claims office for legal review upon completion of IO's report. A CJA or a Claims Attorney providing legal and procedural advice to IO may also conduct legal review.

Legal review will be completed within 5 working days or such time as SPCMCA determines. Written opinion must address criteria set forth in AR 27-20, Paragraph 9-7(g).

If IO recommended an assessment of more than \$5,000, claim will be forwarded to head of area claims office for legal review. Within 5 working days, the head of the area claims office will forward the claim, with recommendations, to the GCMCA. If the GCMCA authorized an assessment of \$10,000 and recommends an additional assessment, the head of the area claims office will forward the packet with the GCMCA's recommendation to the Commander, USARCS, for approval of an additional assessment over \$10,000.

It is important to understand that it is only necessary to forward a claim to a higher authority if there is a finding that a soldier should be held liable in an amount greater than can be assessed by the SPCMCA. The SPCMCA can disapprove a claim in any amount.

**Final Action:**

The Approval Authority may disapprove claim or approve it in an amount equal to or less than the amount recommended by the IO provided that amount does not exceed the limit of their approval authority.

The Approval Authority will notify the claimant and the soldier(s) against whom the claim was made of the determination and their right to request reconsideration, and provide a copy of the IO's findings and recommendations.

The Approval Authority will suspend action on the claim for 10 working days pending receipt of a request for reconsideration unless such delay would result in substantial injustice (e.g., discharge of soldier(s) from active duty).

The Approval Authority will direct the appropriate Defense Accounting Officer (DAO) to withhold the approved amount from the pay of the soldier(s). If any soldier is not subject to the Approval Authority's jurisdiction, the claim will be forwarded to that soldier's SPCMCA for an assessment. If the amount exceeds \$10,000, the GCMCA will direct the withholding of \$10,000 and forward the action to USARCS. If the Commander, USARCS, determines the claim is meritorious in an amount exceeding \$10,000, the Commander, USARCS, will forward a memorandum to the GCMCA approving the additional amount and authorizing the DAO to withhold that amount from the offender's pay.

Should the SJA decide that final action by the GCMCA under R.C.M. 1107 (in a court-martial arising out of the same incident) would be compromised, the GCMCA should forward the claim to USARCS for action.

Subject to limitations provided in appropriate regulations, this assessment is not subject to appeal and is conclusive on any finance officer. It is not subject to the remission and cancellation of indebtedness provisions of 10 U.S.C. §4837(d), as it is not a debt to the U.S. Government.

#### Post-Settlement Action:

The original file will be retained by the claims office which took final action. A copy will be forwarded to the SPCMCA and filed locally. Reconsideration actions are filed in the same manner. If the same incident gave rise to a claim filed under AR 27-20, Chapter 11, a copy of the Article 139 claim will be incorporated into the Chapter 11 claim file.

#### Reconsideration:

A claimant or a soldier whose pay has been assessed may request that Approval Authority or successor-in-command reconsider the action.

Original Approval authority may reconsider action at any time while holding that position, even if a soldier whose pay was assessed has been transferred. This includes directing that the claim be reinvestigated. A successor-in-command's review of the claim is limited to matters set forth in the record.

Unless original Approval Authority receives the request within 10 working days after notice of the decision, actions may only be modified, after legal review, on the following grounds:

Fraud

Substantial new evidence

Errors in calculation

Mistake of law

If return of assessed pay is deemed appropriate, the Approval Authority only may request the claimant return the money. There is no authority for repayment from appropriated funds.

Additional CJA/Claims Attorney Responsibilities:

Forward a completed copy of the claim with pertinent data to USARCS within 10 working days of final action.

Maintain an Article 139 log and monitor suspenses on all pending actions.

Publicize an Article 139 program to commanders, soldiers and the public.