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**SPECIAL CONSIDERATIONS IN DEATH CASES**

The circumstances surrounding the death of naval personnel, or of civilian personnel at places under military control, may be recorded in a variety of ways, such as autopsy reports, battlefield reports, and medical reports. Investigations conducted pursuant to the JAGMAN may also focus on such deaths and may incorporate other official reports as enclosures. Since reports pertaining to deaths of military member are, by law, generally releasable to family members, and since the deceased cannot contribute to the investigation process, special considerations prevail in the investigation of death cases.

**NOTE: NCIS must be notified per SECNAVINST 5430.107 series on any death case involving actual or suspected criminal conduct.**

**Time limitations.** Investigating Officers should complete an administrative investigation concerning death cases within 20 days from the date of the death or its discovery. The CA may extend the investigation for good cause. The CA and subsequent reviewers have 20 days to review and endorse the investigation. If a command does not comply with these time limits, the command must comment on this fact in its endorsement of the investigation. JAGMAN 0225(e)

**Preliminary Inquiry (PI).** A PI should be conducted into the death of a member of the naval service or into the death of a civilian that occurs at a place under naval control. At the conclusion of the PI, the CA must determine which of the options listed in JAGMAN 0204 will be exercised, and report that decision to the next superior in the chain-of-command.

A command investigation under the JAGMAN will normally **not** be conducted if the PI shows that the death:

(1) was the result of a previously known medical condition and the adequacy of military medical care is not reasonable in issue; or

(2) was the result of enemy action.

**Limited Investigations.** Where the death of a servicemember occurred at a location within the U.S. and not under military control, while the member was off-duty, and there is no discernable "nexus," or connection, between the circumstances of the death and the naval service, the command need only obtain a copy of the investigation conducted by civilian authorities and retain it as an internal report. JAGMAN 0226(c). The command shall document, in writing, the reasons for making the determination to conduct a limited investigation, attaching the enumerated reasons to the internal report.

**Command Investigations (CI).** A CI (or in some cases, a litigation-report investigation) will be conducted if the PI shows:

1. The case involves civilian or other non-naval personnel found dead aboard an activity under military control where the death was apparently caused by suicide or other unusual circumstances:

2. the circumstances surrounding the death places the adequacy of military medical care reasonably at issue;
3. there exists a probable "nexus," or connection, between the naval service and the circumstances of the death of a servicemember; or
4. it is unclear if enemy action caused the death, such as in possible "friendly-fire" incidents.

***Line of Duty Determinations:*** A Line of Duty/Misconduct opinion shall be made in all death cases retroactive to 10 September 2001 and regardless of nexus to naval service, pursuant to the National Defense Authorization Act of Fiscal Year 2002 and NAVADMIN 065/03. (**THIS INCLUDES SUICIDES**). LOD determinations effect annuity calculations under the Uniformed Services Survivor Benefits Program. JAGMAN 0229(d).

SBP annuities are calculated as a percentage of the SBP base amount (normally either 35% or 55% of the base amount). When a servicemember's death is determined to be in the LOD, regardless of retirement eligibility, the SBP base is equal to retired pay as if the service member retired with 100% disability (this equals 75% of the member's base pay or high-36 pay. JAGMAN 0229(b). However, if the servicemember is determined to be not in the LOD, then the SBP eligibility and annuity calculations fall under the rules existing before the NDAA of FY 2002; that is, if the servicemember was ineligible for retirement at the time of death, SBP is inapplicable. If the servicemember was eligible for retirement at the time of death, then the SBP annuity would be paid to a qualified survivor, however, it will not be computed on the basis of a nominal total disability retirement. JAGMAN 0229(c).

All active duty death cases must be subject to at least a PI in accordance with JAGMAN 0203. The command conducting the PI will determine if the PI is sufficient to make a LOD determination or if a CI is required. If the command completing the investigation is not a GCMCA with an assigned staff judge advocate (SJA), the command will forward the PI/CI to the first GCMCA in the chain-of-command with an assigned SJA. The GCMCA with an assigned SJA will make the formal LOD determination, subject to a limited review by Commander, Navy Personnel Command if the determination is adverse. JAGMAN 0229(d).

Before making an adverse LOD determination in a death investigation, the GCMCA or his or her SJA shall afford a known potential SBP beneficiary the opportunity to review the report of investigation and provide relevant information to the GCMCA. The known potential SBP beneficiary will normally have 30 calendar days from receipt of the report of investigation to submit information to the GCMCA. JAGMAN 0229(d).

***Independent Reviews.*** Prior to endorsement of an investigation that calls into question the deceased's conduct, the CA may wish the report to be reviewed to ensure thoroughness, accuracy of the findings, and fairness to the deceased member. The individual selected to conduct this review shall have no previous connection to the investigative process and must be outside the CA's immediate chain of command. To the extent possible, the reviewer should possess training,

experience, and background sufficient to allow critical analysis of the factual circumstances. The reviewer is not to act as the deceased's representative, but rather provide critical analysis from the perspective of the deceased, tempered by the reviewer's own experience, training, and education. If the reviewer believes comments are warranted, such comments shall be completed and provided to the CA within ten working days of the report's delivery to the reviewer. The CA is to consider any comments submitted by the reviewer and take any action deemed appropriate. The comments shall be appended to the investigative report. JAGMAN 0231.

***Special routing of death cases.*** An advance copy of all death investigations, with the exception of only a PI or limited investigation, shall be provided to the cognizant Echelon II Commander after the first endorsement. The original report shall note the forwarding of the advance copy, and each subsequent endorser shall provide an advance copy of their endorsement to the Echelon II Commander. JAGMAN 0232.

