

Families First and the Personnel Claims Act

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I. Introduction

Sergeant (SGT) Allen recently moved from Fort Smith to Fort Jones. After receiving his household goods (HHG) shipment, he discovered damage to several pieces of property. He properly documented the damage upon delivery, and within seventy days, visited the local military claims office to file his Department of Defense Form (DD Form) 1840/1840R, Joint Statement of Loss or Damage at Delivery, annotating all of the damage. At the claims office, SGT Allen complained that the movers were unprofessional, that they arrived several hours late for the pick-up, and that they improperly packed certain property. The resulting damage included a fourteen-year-old television that was completely destroyed beyond repair (replacement cost: \$350), a two-year-old veneer wood table that was scratched (replacement cost: \$400, repair cost: \$75), and a twelve-year-old stereo that was missing from the shipment (replacement cost: \$250), for a total claim of \$675. After adjudication under the Personnel Claims Act (PCA),¹ including depreciation, the claimant received \$88 for the television, \$75 for the table, and \$63 for the stereo, for a total of \$226.² This is roughly one-third of the original claimed amount.

Significant changes have taken place in the personal property claims arena in the last year that directly impact Soldiers like SGT Allen who wish to file a claim for HHG losses. After years of study, the Army's Military Surface Deployment and Distribution Command (SDDC)³ recently unveiled the Families First Program. This program, geared toward improving servicemembers' personal property shipment experiences, revolutionizes the way HHG claims are handled. From where to file to how much to expect in reimbursement, the standards have been rewritten. This article will provide the claims practitioner, and anyone filing a HHG claim, with an overview of the program and how claims processing will change as a result. Section II will provide a brief history of the program. Section III will give an overview of the Families First Program and how it differs from traditional PCA claims procedures. Finally, Section IV will highlight some of the issues left to be resolved as the Department of Defense (DoD) transitions to this program.

II. Background

Over the last several years, the DoD studied servicemember benefits in an attempt to ensure they provide cost-effective, quality programs.⁴ These studies revealed at least one clear trend—the mishandling of personal property shipments was a source of frustration for servicemembers, DoD civilians, and their families. From the quality of the movers to the timeliness of claims settlements, the studies revealed significant need for change. As early as 1994, the DoD began to study the effects of several changes through pilot programs.⁵ These studies “revealed that Service Members measure quality service by minimum damage and prompt claims handling.”⁶ Although this conclusion seems obvious, improving the system was no easy task.

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¹ Military Personnel and Civilian Employees Claims Act (Personnel Claims Act), 31 U.S.C. § 3721 (2000).

² Under the Allowance List-Depreciation Guide, all television and home theater systems are depreciated 10% per year, for a maximum of 75%. U.S. Army Claims Service, Allowance List-Depreciation Guide, [https://www.jagcnet.army.mil/JAGCNETIntranet/Databases/Claims/USARCS.nsf/\(JAGCNETDocID\)/HOME](https://www.jagcnet.army.mil/JAGCNETIntranet/Databases/Claims/USARCS.nsf/(JAGCNETDocID)/HOME) (June 1, 2007) [hereinafter List-Depreciation Guide] (follow “Claims Resources” hyperlink; then follow “III. Personnel Claims Resources” hyperlink; then follow “1. Allowance List-Depreciation Guide”). Similarly, stereo equipment is depreciated 10% per year, for a maximum of 75%. *Id.* Finally, solid wood furniture is not depreciated. *Id.* However, furniture made of veneer and particle board or Formica is depreciated 10% per year for a total of 75%. *Id.* In the scenario presented above, the PCA explains that “[f]or items that can be repaired economically, the measure of the loss is the cost of repair or an appropriate loss in value.” U.S. DEP'T OF ARMY, PAM. 27-162, CLAIMS PROCEDURES para. 11-14d (21 Mar. 2008) [hereinafter DA PAM. 27-162].

³ The SDDC mission is to “[p]rovide global surface deployment and distribution services to meet the nation's objectives.” Mission Statement, Surface Deployment and Distribution Command (SDDC), <http://www.sddc.army.mil/Public/Home/About%20SDDC/Mission%20Statement?summary=fullcontent> (last visited Nov. 13, 2008).

⁴ U.S. Dep't of Defense, Department of Defense Future Personal Property Program: Families First 2, available at http://www.sddc.army.mil/sddc/Content/Pub/35838/Families%20First%20Pamphlet_v9.pdf (last visited Nov. 12, 2008) [hereinafter Families First Info. Paper].

⁵ *Id.*

⁶ *Id.*

In conjunction with the commercial moving industry, the DoD devised a complete overhaul of the personal property system.⁷ This new system addresses how movers are selected, how claims are filed, and how much money can be recovered under a claim. The result of these efforts is a system that seems to satisfy the concerns of the servicemember, while limiting cost increases to the government. Although this program was devised in 2003, it continues to suffer setbacks that have delayed its implementation.⁸ Given the significant deployments and training commitments servicemembers face, this program will likely be a welcome change for future claimants when finally implemented.⁹ With more frequency, servicemembers' spouses are solely responsible for accepting HHG shipments and filing the resulting personal property claims. By improving the quality of moves and decreasing the complexity of claims processing, servicemembers and their families will experience one less worry during the transition to a new duty assignment.

III. The Families First Program

The final program proposed by DoD has three primary features relevant to claims practitioners: (1) contracts awarded based on Best Value; (2) Full Replacement Value (FRV) coverage on lost or damaged property; and (3) on-line filing under the Defense Personal Property Shipping System (DPS).¹⁰

A. Contracts Awarded Based on Best Value

The new program changes the procedures for awarding personal property shipping contracts. Currently, shipping contracts are awarded solely based on cost,¹¹ so generally the lowest qualified bidder receives the contract. While systems are in place to bar certain poorly rated shippers from competing, these bars are few and far between. Under the new system, however, the government will award the contract to the bidder offering the best value.¹² Under this system, contracts are assessed a score based 70% on past performance and only 30% on cost.¹³ The performance record is based on customer satisfaction surveys (CSS) completed by all servicemembers after their moves. The DoD began distributing these surveys last year.¹⁴ Currently, however, few surveys are being completed by servicemembers, leaving contracting officials with little information with which to make future performance evaluations.¹⁵ Whether awarding contracts under the best value system will result in improved customer satisfaction is yet to be seen, but what is certain is that the change directly addresses one of the chief complaints of servicemembers.

B. Full Replacement Value

Perhaps the centerpiece of the new Families First Program relates to the filing of claims following a servicemember's HHG shipment. Under the PCA, claims are filed directly with the military claims office at the local staff judge advocate office and, for Army claims, processed under Chapter 11 of Army Regulation 27-20.¹⁶ The claimant files the hard-copy DD Form 1840 and 1840R within seventy days, the claims office forwards the notification to the carrier within seventy-five

⁷ *Id.*

⁸ The SDDC elected to delay implementation of Families First until after the Defense Personal Property System computer program was developed and operational. Mandatory Provision of Full Replacement Value Coverage by Department of Defense Personal Property Transportation Service Providers (TSPs)/Contractors, 72 Fed. Reg. 67,921 (Dec. 3, 2007).

⁹ As the 2008 Army Posture Statement makes clear, "Today's Army is out of balance. . . . Soldiers, Families, support systems, and equipment are stretched and stressed by the demands of lengthy and repeated deployments, with insufficient recovery time." The Honorable Pete Geren & General George W. Casey Jr., A Statement on the Posture of the United States Army 2008 (26 Feb. 2008). Although DoD civilians are also eligible for all of the benefits discussed herein, this article will primarily refer to servicemembers and their families.

¹⁰ U.S. Army Surface Deployment and Distribution Command, CSS Talking Paper, subject: Families First (FF) Customer Satisfaction Survey (CSS) (n.d.).

¹¹ See Memorandum from Joseph Goetzke, Chief, Personnel Claims and Recovery Division, U.S. Army Claims Service, to Army Claims Personnel, subject: New Full Replacement Value Claims Program 2 (7 Aug. 2007) [hereinafter FRV Memo].

¹² Families First Info. Paper, *supra* note 4, at 3.

¹³ FRV Memorandum, *supra* note 11, at 2.

¹⁴ Interview with Joseph Goetzke, U.S. Army Claims Service, in Bad Kissingen, F.R.G. (Oct. 16, 2008).

¹⁵ Joseph Goetzke, U.S. Army Claims Service, Personnel Claims & Recovery: New Developments (Oct. 16, 2008) [hereinafter Goetzke PowerPoint Presentation] (unpublished PowerPoint Presentation) (on file with author).

¹⁶ U.S. DEP'T OF ARMY, REG. 27-20, CLAIMS ch. 11 (8 Feb. 2008) [hereinafter AR 27-20].

days,¹⁷ and the claimant must perfect the claim within two years.¹⁸ In order to perfect the claim, among other things the claimant must provide substantiation regarding ownership, the nature of the property, the value of the property, and the nature and extent of the loss or damage.¹⁹ The cost of repair or replacement is usually evidenced by an estimate obtained by the claimant. If the claim is cognizable, the claimant typically receives only a fraction of the claimed amount after deductions for depreciation.²⁰ Servicemembers are particularly penalized regarding electronic equipment claims, which, as the hypothetical illustrates, are subject to rapid depreciation.²¹ Under the new system, many of the negative features of HHG claims processing under the PCA are either eliminated or substantially mitigated.

The new Families First Program drastically changes the claims process. First, claimants no longer file their HHG claims with the military claims office, but instead file directly with the carrier.²² However, to receive full replacement value, the claimant must perfect the claim within nine months of the date of delivery, rather than the two years provided under the PCA.²³ The claimant does receive additional assistance from the carrier in perfecting the claim. Namely, the burden is on the carrier to establish the value of the loss and to obtain estimates of loss or damage.²⁴ Once the claim is perfected, the claimant will then receive the lesser of full replacement value or the cost of repair for each item.²⁵ However, the carrier's total liability for a shipment is limited to \$4.00 per pound for a maximum of \$50,000.²⁶ If the claim exceeds this amount, the claimant can still file with the Army for the difference, but will only receive the depreciated value of any loss.

In the case of SGT Allen from the hypothetical, instead of delivering his DD Form 1840/1840R to the claims office, he would instead file online directly with the carrier within the seventy-five day deadline.²⁷ The carrier would then be responsible for obtaining estimates for the property.²⁸ If he met this timeline, SGT Allen would likely receive the full replacement cost of the TV and the stereo, and the repair cost for the table. This would increase SGT Allen's compensation for the losses nearly threefold, from \$226 to \$675.

Despite the dramatic increase in compensation, many servicemembers may be hesitant to file with a commercial carrier instead of their local claims office. To be sure, the aims of the claims office vice a commercial enterprise are different. While the PCA is a morale program, giving Soldiers the benefit of the doubt, a moving company is a commercial enterprise, primarily concerned with making money. However, there are two significant safeguards in place to ensure that commercial carriers treat claimants fairly.

The first safeguard under Families First is that claimants complete a CSS that specifically asks them about their moving experience and the settlement of any claim associated with the move. In the case of SGT Allen, he would fill out a CSS detailing the unprofessional attitude of the movers and their shoddy packing.

The most important safeguard, however, is that claimants may still file with their local military claims office if they are dissatisfied with the carrier's offer, or even if they would simply rather not deal with the carrier.²⁹ If the claimant satisfies the seventy-five day and nine month filing requirements, and then rejects the carrier's claim settlement offer because he believes

¹⁷ Under Department of the Army Pamphlet 27-162, "The submission of the DD Form 1840R within 75 days of delivery to a military claims office creates a presumption that items listed on the form were lost in transit and, therefore, were lost or damaged incident to service." DA PAM. 27-162, *supra* note 2, para. 11-14(i)(1). Although the claimant must provide "timely notice" to the carrier within 75 days, "the form advises the claimants to submit it within 70 days, in order to give the claims office time to dispatch a copy to the carrier within 75 days." *Id.*

¹⁸ *Id.* para. 11-7a.

¹⁹ See AR 27-20, *supra* note 16, para. 11-11.

²⁰ DA PAM. 27-162, *supra* note 2, para. 11-14g.

²¹ List-Depreciation Guide, *supra* note 2.

²² Families First Info. Paper, *supra* note 4, at 3.

²³ U.S. Army Surface Deployment and Distribution Command, Guidelines for Full Replacement Value 1, available at <http://www.sddc.army.mi./Content/Pub/38216//GuidelinesFRV.pdf> (last visited Nov. 19, 2008) [hereinafter FRV Guidelines].

²⁴ *Id.* at 5.

²⁵ *Id.* at 9.

²⁶ Regardless of the weight of the shipment, the carrier is liable for a minimum of up to \$5000 on any shipment. FRV Memo, *supra* note 11, at 2.

²⁷ DA PAM. 27-162, *supra* note 2, para. 11-14i. He may also elect to give it to the MCO with 70 days, who will forward it to the carrier.

²⁸ See Families First Info. Paper, *supra* note 4, at 3; FRV Guidelines, *supra* note 23.

²⁹ FRV Guidelines, *supra* note 23, at 6, 7. Note that "the owner can accept payment from the TSP on those items on which the owner and the TSP have reached agreement. If the owner elects to accept partial settlement, the TSP may pay the owner on the items on which they have reached an agreement." *Id.*

it is too low, the claimant may file the claim with the military claims office within two years of the original date of delivery.³⁰ If the claim is meritorious, the claimant may recover his losses under the PCA. However, the claim will be subject to the PCA depreciation rules, so the client may actually receive less than the carrier's offer.³¹

If the claimant accepts the depreciated values for his claim, the claims office will then seek recovery for the full replacement value from the carrier.³² If the claims office is able to recover the undepreciated value of the loss, the claimant will then receive the difference.³³ Finally, if a claimant is simply not comfortable filing directly with the carrier, he may still file a HHG claim directly with the military claims office, but, once again, will still be subject to the PCA depreciation rules.³⁴ Based on the new options available, claimants have nothing to lose, and a substantial amount to gain, by filing their HHG claim with the carrier before using the traditional claims process.

Because the Families First Program has yet to be instituted, the full replacement feature of this program is still pending release. However, the 2007 National Defense Authorization Act mandated that the DoD provide interim full replacement coverage for all shipments no later than March 2008, regardless of the final implementation date of the Families First Program.³⁵ In response to this mandate, full replacement value (FRV) coverage has been available on all HHG government bill of lading³⁶ shipments.³⁷ All contracts for international shipments picked up on or after 1 October 2007 and domestic shipments picked up on or after 1 November 2007 included the full replacement value coverage.³⁸ However, FRV was not available for non-temporary storage shipments and local move shipments until 1 March 2008.³⁹ While it is not a part of the full Families First Program, the current FRV coverage has nonetheless been a welcome change for many military families.

C. Defense Personal Property Shipping System (DPS)

The final feature of the Families First Personal Property Program initiative is a change in the way HHG shipments are managed and claims are filed. Among other features, the DPS will allow servicemembers and qualified DoD civilians to book their shipments on-line, rather than visiting the transportation office.⁴⁰ In addition, DPS will provide information about the status of shipments and scheduling deliveries.⁴¹ Finally, the system will allow claimants to file their claims with the carrier online without going to the military claims office.⁴²

This web-based program was intended to be the "cornerstone of Families First,"⁴³ but problems have plagued its development for the last three to four years.⁴⁴ As a result, all other features of the program have been delayed in anticipation

³⁰ *Id.*

³¹ List-Depreciation Guide, *supra* note 2.

³² Goetzke PowerPoint Presentation, *supra* note 15.

³³ *Id.*

³⁴ FRV Guidelines, *supra* note 23, at 7.

³⁵ 10 U.S.C. § 2636a (2000).

³⁶ Shipment under government bill of lading is the most common method of shipping HHG. Under this method, the government posts a revolving solicitation for carriers, and then assigns a carrier to a shipment as soon as one becomes available. However, under certain circumstances, shipments may be individually contracted for under the Direct Procurement Method (DPM). In such cases, the local transportation officer, through a contracting officer, arranges for a solicitation and contract award for one HHG shipment. Interview with Steven Kelly, U.S. Army Claims Service, in Willingen, F.R.G. (Oct. 24, 2008) [hereinafter Kelly Interview].

³⁷ 10 U.S.C. § 2363a.

³⁸ News Release, Military Surface Deployment and Distribution Command, Servicemembers and DoD Civilians are Eligible for Full Replacement Value (FRV) (Aug. 1, 2007), available at <http://www.sddc.army.mil/Public/Top%20Nav%20Bar/Press%20Releases/2007?summary=fullcontent> (follow link on side of screen to Press Release 005-2007).

³⁹ *Id.*

⁴⁰ Families First Info. Paper, *supra* note 4, at 3.

⁴¹ *Id.*

⁴² *Id.* at 4.

⁴³ *Id.* at 3.

⁴⁴ News Release, Military Surface Deployment and Distribution Command, Families First Takes Strategic Pause to Ensure a High Quality Program (Nov. 9, 2005), available at <http://www.sddc.army.mil/sddc/Content/Pub/36143/JTCNPR.pdf>. In November 2005, the SDDC informed the public that they would

of the underlying computer tracking system. Meanwhile, the Air Force, which recently consolidated all of its military claims offices in Dayton, Ohio, has an online filing program (unrelated to Families First) that has received positive reviews from claimants and claims practitioners alike.⁴⁵ If the Air Force program is any indication, the DPS will be a welcome improvement to current claims processing procedures.

IV. Issues for Claims Practitioners

The Families First Program promises much-anticipated improvements to the HHG claims processing system. However, claims practitioners should be aware of some issues that may arise during the early stages of implementation.

First, the entire premise of the best value procurement relies on accurate and timely feedback from clients regarding their personal property shipment experience. Seventy percent of the score received by shippers is based on their performance. As mentioned earlier, even in the first months of implementation, SDDC has recognized that few claimants are filing out the CSS forms as required.⁴⁶ If this trend continues, the performance evaluations will be inaccurate or incomplete, and contracts will once again, by default, be awarded based primarily on cost. Claims practitioners and transportation offices must emphasize to all clients the importance of completing these forms. Otherwise, an extremely important component of the program will be rendered useless.

The second issue is that although claimants will likely benefit by filing their claim directly with the carrier, they must be aware of the pitfalls associated with this feature. First, the claimants must perfect their claims within nine months in order to receive FRV.⁴⁷ With deployments and training, many claimants will find it difficult to meet this timeline. Therefore, military claims offices should be diligent about publicizing the program and the new timelines to all potential claimants. In addition, the claimant should be cautious regarding the carrier's responsibility for obtaining repair and replacement estimates. Although this can be a great convenience, claimants must be ready to obtain independent estimates if they believe the carrier's estimates are too low. Trusting the carrier to establish the value of the loss without verifying it could prevent the claimant from reaping the benefit of the FRV program.

Finally, the Families First Program is still too new to know its potential effects on military claims offices. In the short term, claims offices will be busy processing claims under the old system and assisting claimants unfamiliar with or uncomfortable with the new procedures. However, once the DPS program is operational, military claims offices will likely see a precipitous drop in the number of HHG claims filed. Household goods claims make up a large portion of the work conducted in most claims offices. Once the program is fully operational, will these offices be closed or, at the very least, consolidated? If so, a new host of problems may arise as customers adjust to a reduction in face-to-face customer service. While it is too early to make a definitive judgment on the effects, it is clear that all legal offices must continue to disseminate accurate and timely information regarding all aspects of the program.

VI. Conclusion

The Families First Program is the realization of several years of research and studies on how best to serve the military community. The program will largely improve the way claims are processed, and it comes at a time when it is most needed by our fully-engaged military. While the program appears to achieve its primary goals—providing “quality service [through] minimum damage and prompt claims handling”⁴⁸—there are some potential pitfalls. For Soldiers like SGT Allen, although he may be able to receive additional compensation for his items, that compensation comes with tighter filing deadlines and the uncertainty of dealing directly with the carrier. The key to successful implementation of the Families First Program remains with the military claims office, which will be responsible for disseminating timely and accurate information on claimants' filing options. Regardless of when it is finally implemented, the Families First Program will be a great benefit to servicemembers, DoD civilians, and families.

not meet their original February 2006 roll-out date. *Id.* The news release explained that “[r]ecent hardware and software integration problems have caused us to step back and reevaluate current efforts.” *Id.*

⁴⁵ Not only has the Air Force claims program streamlined the claims filing process, but it has also improved claims processing timely markedly. By directly interfacing with DFAS, Air Force claims are paid within days of filing. Kelly Interview, *supra* note 36.

⁴⁶ Goetzke PowerPoint Presentation, *supra* note 15.

⁴⁷ Families First Info. Paper, *supra* note 4, at 3.

⁴⁸ *Id.* at 2.