4.5.1 When POD Is Required

Proof of death of an employee or employee annuitant is required in all claims for survivor benefits. POD of other individuals is also required in the following situation:

A. When the death of any person who, if living, would be entitled to all or a portion of the survivor benefit is alleged AND such death occurred after the death of the employee or employee annuitant.

   NOTE: POD of a widow(er) is required in spouse–to-widow(er) cases, when the widow(er) dies after the employee but in the same month as the EE and a LSDP is payable

B. When a designated beneficiary is an RLS case who, if living, would be entitled to an amount in excess of $100.00 is alleged to have died.

C. When the spouse in a J&S election case dies before the employee annuitant.

D. Any other case in which there is reasonable doubt as to the death of:

   - Any person who, if living, would have priority over the applicant; or
   - Any spouse whose death is alleged to have ended a prior marriage; or
   - Any beneficiary whose termination of entitlement would increase other benefits.

4.5.2 Reconciling Conflicting Dates Of Death

There may be a conflict between the date of death shown on the evidence and the date of death claimed on the application for benefits or other material in file. In such cases, accept the date indicated by the evidence unless the discrepancy:

- Involves the month or year of death; and
- Is material; and
- Is not satisfactorily explained.

To resolve the conflict, secure additional evidence of the correct date of death.

4.5.3 Acceptability Of POD Used By SSA

Any evidence acceptable to SSA as POD is acceptable to the Board without further development unless there is a conflict as explained in the preceding section.

Additional evidence of death is not required for the payment of an RLS when POD has been accepted by SSA and is contained in their files. A notation on a G-80 that POD is contained in SSA's files is sufficient evidence of that fact.

SSA NUMIDENT may also be used as POD if the record indicates DOD has been verified (see FOM1 905.5.2.C.2).

4.5.10 Preferred Evidence - Death Occurred Within United States

A. Public Death Records - Preferred POD consists of:

- A certified copy of the public record of death, coroner's report of death or verdict of the coroner's jury of the State or community where death occurred, a certificate by the custodian of the public record of death, or a certificate or statement of death issued by a local registrar or public health official; or

- A certified copy of an official report or finding of death made by an agency or department of the United States which is authorized or requested to make such report or finding in the administration of any law of the United States; or

- A photocopy of any of the documents described above showing no signs of alteration. (A photocopy of a death certificate does not have to be certified.) If a photocopy has been altered, obtain the original document.

NOTE: See Appendix A of Chapter 4.2 for information on the availability and cost of death certificates.

B. RRB Forms - The following forms are acceptable:

- G-80 complete by either an RRB or SSA employee showing the DOD; or

- G-91 describing public record of death; or

- G-273 (Statement of Death by Funeral Director). This form is acceptable only if it is received in an office of the Board by 8-31-89; or

- G-273a (Statement of Burial Expenses). This form serves a dual purpose, i.e., it may be used as proof of payment of B/E and POD. (If the FH is applying directly for the LSDP, G-273a is not acceptable as POD.)

C. SSA Forms - The following forms are acceptable:

- SSA-704 (Describing public record of death; or

- SSA-721 (Statement of Death by Funeral Director); or

- SSA-2872 (Statement of Death and Burial Expenses by Funeral Director).

NOTE: A photocopy of the SSA-704, SSA-721, or SSA-2872 furnished by SSA does not have to be certified to be acceptable as POD. If the FH is applying directly for the LSDP, the SSA-721 or SSA-2872 is not acceptable as POD.

4.5.11 Preferred Evidence - Death Occurred Outside United States

When the death of an individual, other than a member of the U.S. Armed Forces, occurred outside of the U.S., acceptable POD is:

- A report of death by a United States Counsel, or other agent of the State Department, bearing the signature and official seal of such consul or agent; or
- A certified copy of the public record of death; or
- A signed statement of death by a funeral director (RRB Form G-273 or SSA Form SSA-721 or Forms G-273a or SSA-2872 submitted as proof of B/E (unless the FH is applying directly for LSDP) when submitted through a D/O for deaths occurring in Canada or Mexico; or
- Other evidence of probative value

4.5.12 Evidence Of Death For Members Of U.S. Armed Forces

A. Death Occurred Within the U.S - Accept any of the evidence described in sections 4.5.10 and 4.5.13.

B. Death Occurred Outside the U.S. - Accept any of the following types of evidence.

- The official report of death (including telegrams), or any signed communication from the Washington D.C. headquarters of the service department showing the date of death; or
- A letter from any commanding officer under whom the serviceman served at the time of death describing the casualty and showing the date of death; or
- A citation signed by the President of the United States showing the serviceman's name and date of death.

4.5.13 Secondary Evidence Of Death

If preferred evidence cannot be obtained and a satisfactory reason is provided in a signed statement by the applicant, accept one of the following:

- A signed statement on the official stationery of the attending physician, or superintendent of the institution where death occurred (SSA's Form SSA-795 completed by such physician or superintendent is acceptable in this case); or

- The sworn statements of two or more persons having knowledge of the death which set forth the facts and circumstances as to the date, time, place, and cause of death; or

- Other evidence of probative value.

4.5.20 Effect Of Disappearance On RR Act Benefits

A. Retirement Annuities - No annuity can accrue to an employee annuitant for any month during which (s)he disappears unless it is proven that (s)he was actually alive during such month. Suspend the employee annuity upon notice of disappearance, continue to pay the spouse annuity, if any. See section 4.5.20C.

B. Effect on Accrued Annuities - When the annuitant disappears, deny an application for accrued annuities unless the applicant can submit evidence to show that the annuitant was alive for one or more months after the month of disappearance. However, the accrued annuity for the months the annuitant is shown to be alive cannot be paid unless the evidence shows that the annuitant is now dead or is presumed to be dead.

C. Survivor Benefits - Survivor benefits are payable from the month of the employee's disappearance if the following conditions are met:

The employee has a current connection with the railroad industry;

AND

The employee's spouse is entitled, or would have been entitled if he/she had filed an application, to a spouse's annuity in the month of disappearance.

A jurisdiction determination cannot be made until we or SSA have proof of death or death can be presumed. If the employee is entitled to SS benefits, SSA will suspend the benefit. However, any auxiliary benefit is continued in force until they have proof of death or death can be presumed. Base survivor benefits on the combined record, even though the survivor may concurrently be entitled to SS benefits based on the employee's SS earnings record during the period of disappearance.

1. If the above conditions are met - Initiate normal survivor development action as well as development for presumption of death.

2. If the above conditions are not met - If the employee does not have a current connection and the spouse is entitled to an annuity in the month of disappearance, or would have been entitled if he/she had filed an application, continue paying the spouse annuity until one of the following events occurs:

- The employee's death is established.
- The spouse annuity terminates for another reason.

When survivor benefits have been paid and it is later determined that the employee annuitant was alive for one or more months after disappearing, recover the total amount of survivor benefits paid for such month(s) minus the total amount payable as a spouse annuity.

4.5.21 Presumptive Finding Of Death

A. General - The termination of an annuity due to disappearance does not establish a date of death. Therefore, develop for presumption of death in accordance with the following sections whether or not the annuitant leaves a spouse. Submit the fully developed case to the Deputy General Counsel for determination.

B. Presumption of Death in Military Service - A presumptive finding of death by a service department is made pursuant to Section 5 of Public Law 490, 77th Congress, as amended and will so state. The date of death in these cases is a statutory date, and is usually a year and a day from the missing date but may be later in some cases.

If the finding establishes the fact of death but it is not evident as to the date of death, use the presumptive date of death as the date of death in the absence of evidence establishing a later date.

4.5.22 Development Of Evidence Of Presumptive Death Of Missing Person - Body Not Recovered

When the body of a missing person has not been recovered, obtain the best evidence possible in accordance with the following instructions. After full development, submit the case to the Deputy General Counsel for determination.

A. Statements From Claimant and Others - Obtain detailed statements from the claimant and other persons having knowledge showing the following:

- Identification of the person making the statement;
- Time, place, and circumstances in which the missing person was last seen;
- Remarks and actions of the missing person before disappearance;
- Search for the missing person;
- Missing person's continued absence from his residence, business, and customary haunts;

- Reasons or lack of reasons for falsifying a disappearance, such as financial, family, or mental trouble;

- Pertinent evidence or information which came into the person's possession before, during, or after the disappearance and its source and basis;

- Opinion as to whether death was the probable result of the circumstances in which the missing person was last seen;

- Whether a court has been petitioned to declare the missing person dead.

B. Writings by Missing Person - Obtain any letters, notes, or other writings left or sent by the missing person which have any bearing on the disappearance.

C. Insurance Investigation - If available, obtain:

  - Evidence as to whether any life insurance policies carried on the missing person's life were paid in full;

  - The facts and date of death established by the insurance company's investigation.

4.5.23 Disappearance Due To Drowning

Develop in accordance with the preceding section and, if possible, obtain statements from three or four representative eyewitnesses before submitting the case to the Deputy General Counsel for determination. If there were fewer than five eyewitnesses, obtain statements from all. If there were no eyewitnesses, obtain statements from other persons having knowledge of the facts giving the basis of their knowledge. In all cases, the statement should include:

- The depth of the water; and

- Swiftness of the current; and

- The person's ability to swim; and

- The distance from shore to the point where (s)he disappeared; and

- Whether any boats were in the immediate vicinity; and

- Whether (s)he reappeared on the surface of the water before the final disappearance; and

- The length and nature of the search made for the body.

4.5.24 Disappearance After Common Disaster

In common disaster cases when the body is not recovered, the file should contain the applicant's statement that the employee is believed to be dead (and the reasons therefor) and a statement from a disinterested person to corroborate the applicant's belief.

A. Applicant's Statement - The applicant should state under "Remarks" on the application or on a continuation sheet why (s)he believes the employee should be presumed dead; i.e.,(s)he should state such facts as will bear out the fact that the employee was presumably on the scene of the accident when it occurred and that disappearance is attributable to the disaster.

B. Statement From Disinterested Person - The principle requirement in common disaster cases is to prove as definitely as possible that the missing person was on the scene of the accident and was in imminent peril. Therefore, the best evidence is statements from individuals who saw the missing person at the scene of the accident shortly before it happened, or under such circumstances that make it appear unlikely that (s)he could have survived. The employer or a fellow employee is probably in the best position to furnish this type of statement. Any such statements should also contain the reasons for believing that the employee is dead.

In cases in which it is not possible to obtain statements to indicate that a particular employee was observed at work or actually trapped at the scene of the accident, obtain statements which will establish that (s)he was presumable at the scene when the accident occurred. A master statement by an employer giving the names of employees who were believed to have been on duty in establishing the death of an employee. Such a statement should clearly show the basis for the knowledge or belief that the particular employees were on the scene of the disaster when it occurred. A copy of the master statement should be included with each claim.

In disasters involving common carriers, obtain the statement of responsible company officials and statements of crew members or witnesses.

Cases probably will arise in which the missing person was not known to have been at the scene of the disaster, and it will be impossible to secure a statement from an employer, fellow employee, or eyewitness placing the employee on the scene when the disaster happened. In such case, secure from the applicant and friends or neighbors all information which may have a bearing on the movements of the missing individual the day of the accident, and which tends to establish whether (s)he may be presumed to have died in the disaster. (See section 4.5.22 for detailed instructions on developing presumptive death).

After full development, submit the case to the Deputy General Counsel for determination.

4.5.25 Missing Person - Unexplained Absence Of Seven Or More Years

When a person has been absent from home without explanation and unheard of for seven or more years, (s)he may be presumed dead in the absence of substantial evidence to the contrary. After full development, submit the case to the Deputy General Counsel for determination.

In addition to the development outlined in sec. 4.5.22, develop the following:

A. Statement From Claimant - Obtain the following information:

- When and what was last heard concerning the whereabouts of the missing person;
- What effort was made to learn of the person's whereabouts if no information concerning the missing person has been received over a long period of time;
- Whether there had been any previous separation of the missing person from his family;
- Whether there is any belief that the missing person is dead, and the basis of such belief;
- Whether the missing person designated a beneficiary in a life insurance policy or policies (s)he had taken out.

B. Statement From Other Person - Obtain a statement from another person who has knowledge of the missing person's domestic life to explain the attitude of the missing person and his family toward each other.

C. Statement From Police Department Official - Obtain a statement from an official in the police department which conducted a search for the missing person to indicate what action was taken, how extensive the search was, and whether it uncovered any trace of the person's whereabouts.

D. Compensation and/or Wage Record - Determine whether compensation and/or wages were reported for the missing person after disappearance.

4.5.26 Missing Person Other Than Employee

The existence of a person who is missing and thought to be dead (other than the employee upon whose death the claim is based), may directly affect the right of an applicant to benefits. Develop these cases in accordance with the preceding section. If it is found that the missing person was alive after his disappearance, inform the applicant that the missing person is known to have been alive during the period of his absence and cannot be presumed to be dead. If the applicant requests information

concerning the missing person or wants proof of the missing person's existence, refer the case to the Secretary of the Board (see chapter 10.1).

4.5.35 Felonious Homicide

A person who is found guilty under applicable State laws of the felonious and intentional homicide of an employee cannot become entitled to benefits with respect to the death of that employee. When the employee's death was caused by violence and when it is possible that a claimant living in the same area might have caused the employee's death, determine whether felonious homicide is involved. However, if the death certificate shows that the death was an accident or suicide, felonious homicide need not be considered.

EXAMPLE 1: John Doe died on 9-27-69 in an apartment in Chicago and was survived by an eligible widow residing in Gary, Indiana. The death certificate shows that death resulted from a gunshot wound which was neither accidental nor self-inflicted. Develop for felonious homicide since the widow was in the area where the violent death occurred and might have been involved.

EXAMPLE 2: Frank Smith died on 10-11-69 at his home in Detroit, Michigan and was survived by a not living with widow also residing in Detroit. The death certificate also shows that death was accidental and, therefore, felonious homicide need not be considered.

4.5.36 Effect Of Felonious Homicide On Benefits

A person who has been convicted of the felonious and intentional homicide of the employee is considered nonexistent in determining the entitlement of other survivors or the amount of their benefits.

Burial and/or other related expenses paid by a person convicted of the felonious and intentional homicide of the employee will be excluded in computing the reimbursable amount. If the felon is reimbursed by some other person, that other person is not equitably entitled and may not receive payment on the basis of such reimbursement.

The lump-sum death benefit cannot be paid to a funeral home based on authorization by a person who has been convicted of the felonious and intentional homicide of the employee and who assumed responsibility for paying all of the funeral home expenses.

After the expiration of 90 days after the employee's death, the funeral home may qualify for the lump-sum on its own application if no one else has assumed responsibility for payment of such expenses.

4.5.37 Meaning Of Intentional Homicide

A. General - Intent generally refers to the purpose(s) for doing an act; a wish or an expectancy that the act will have a certain result (regardless of the actual

likelihood of such a result). Intent has also been defined as the presence of will in the commission of a criminal act where the individual is fully aware of the nature and probable consequences of the act which is to be done. This applies whether the individual desires that such consequences occur or is indifferent as to their occurrence. Since intent is a state of mind; it is seldom established by direct proof but must be inferred from facts. Examples of situations where intentional homicide with respect to an individual will be found are: An individual actually desires the death of the employee to result from his or her act; an individual commits an act which he or she knows could result in the death of the employee even thought the employee's death is not actually desired (except as noted below).

The following cases are excluded from intentional homicide: homicides which are the result of an accident; homicides where the killing is the result of self-defense; homicides where the claimant was insane when he or she killed the employee, i.e., unaware of the nature and the consequences of the act.

B. Particular Offenses - Murder in the first degree involves intent by definition. Murder in the second degree is presumably intentional though the presumption if rebuttable. In the absence of evidence to considered an intentional homicide. (The rare statutory offense of murder in third degree, found in only a few states, is defined as an unintentional act.)

Manslaughter may be either involuntary or voluntary, though the laws of some states do not distinguish between voluntary and involuntary manslaughter but merely provide that manslaughter is a felony.

Involuntary manslaughter will generally be regarded as an unintentional slaying, and conviction of this offense will generally not bar entitlement to an LSDP or to monthly benefits.

Voluntary manslaughter may or may not preclude entitlement depending on the law of the state in which the charge is preferred. This is also true of a charge of manslaughter if state law does not distinguish between voluntary and involuntary manslaughter. In such cases, development of the facts relative to the slaying will be required and submission to the Bureau of Law may be necessary.

C. List of Particular Offenses

Conviction	**Rule**
First degree murder	Intent conclusively presumed.
Second degree murder	Intent presumed, but may be rebutted.
Third degree murder	Lack of intent presumed. This may be rebutted.

Involuntary manslaughter	Lack of intent presumed. This may be rebutted.
Voluntary manslaughter	No presumption. Facts must be developed. (See (B) above.)

4.5.38 Homicide By Child

If a child is tried in an adult criminal court and convicted of the intentional and felonious homicide of the employee, no benefits may be paid to the child.

If the child is under the jurisdiction of the juvenile justice system, and the juvenile court finds that the child intentionally killed the employee by an act which, if committed by an adult, would be considered a felony, no benefits may be paid to the child. Information on the court's finding should be obtained from the court, the state's attorney, or other reliable source. If possible, a copy or official synopsis of the court finding should be obtained. If the court records are sealed and no information is available, the benefits should be paid unless information is later obtained which shows that the child intentionally killed the employee. If the juvenile court finding does not clearly show whether the act would be considered a felony, ask the Bureau of Law to determine whether the child's offense would be intentional and felonious if committed by an adult.

4.5.39 Development Of Felonious Homicide

When felonious homicide is a possibility, initiate D/O development to determine whether or not the applicant was involved in the employee's death unless the D/O has already reported that the case is under investigation. Do not initiate D/O development if it is established that the applicant was at or near the place where the employee died through violent means. Do not conduct any correspondence with the applicant or his representative about the case.

4.5.40 D/O Handling Of Felonious Homicide Cases

A. Charge of Felonious Homicide Pending Against the Applicant - The D/O report will state that evidence, as specified in (B) below, will be furnished when the applicant is acquitted or convicted. (Do not make any payment to the applicant until the case is resolved.)

B. Applicant Is Acquitted or Convicted - The D/O will furnish a certification of the final verdict or proper court record, or a statement from the district attorney or other proper court official, as to the final disposition of the case.

C. Person Other Than Applicant is Charged With or Convicted of Employee's Felonious Homicide - The D/O will furnish a statement by the proper law enforcement official showing that the applicant was not involved in the homicide.

D. No One Has Been Charged With or Convicted of Employee's Felonious Homicide - The D/O will furnish a statement from the proper law enforcement official showing that the applicant was not involved in any way.

4.5.41 Cases Involving Manslaughter

If the claimant has been convicted of voluntary manslaughter, the DO will include in the file a brief summary statement of the circumstances under which the killing took place, and all available evidence that has a bearing on the question of whether the homicide was intentional. Such evidence includes statements from the prosecuting attorney, trial transcripts, coroner's and police reports, and the finding of the court in its decision. BRC is unable to make a determination as to the individual's intent, it should submit the case to the Bureau of law for an opinion. This instruction is also applicable to convictions or charges of manslaughter in states which do not distinguish between voluntary and involuntary manslaughter.

If the decision was rendered by a foreign court and there is a question as to whether the individual has been convicted of felonious and intentional homicide, submit the case to the Bureau of law.

4.5.42 Convicted Claimant Is Granted Pardon

A pardon of a claimant who has been convicted of the felonious and intentional homicide of the employee makes the felonious and intentional homicide regulations inapplicable only if it is clearly shown that the pardon was granted because the pardoning authority became convinced (e.g., by new evidence) that the convicted person was in fact innocent of the crime. This will generally be indicated in the pardon. If not, and it is alleged that the pardon was granted for this reason, get information from the pardoning authority as to whether innocence was the basis for the pardon. The fact that the pardon is granted is not alone a basis for concluding that the pardoning authority became convinced of the claimant's innocence since an executive pardon may be granted for other reasons.