

Army Regulation 600-8-4

Personnel-General

Line of Duty Policy, Procedures, and Investigations

**Headquarters
Department of the Army
Washington, DC
4 September 2008**

UNCLASSIFIED

SUMMARY of CHANGE

AR 600-8-4

Line of Duty Policy, Procedures, and Investigations

This administrative revision, dated 4 September 2008--

- o Updates publication title page.
- o Makes administrative changes (throughout).

Effective 4 October 2008


Personnel-General

Line of Duty Policy, Procedures, and Investigations

By Order of the Secretary of the Army:

GEORGE W. CASEY, JR.
General, United States Army
Chief of Staff

Official:


JOYCE E. MORROW
Administrative Assistant to the
Secretary of the Army

History. This publication is an administrative revision. The portions affected by this administrative revision are listed in the summary of change.

Summary. This regulation prescribes policies, procedures, and mandated tasks governing line of duty determinations of soldiers who die or sustain certain injuries, diseases, or illnesses. It implements titles 5, 10, and 32, United States Code. It takes precedence over all other publications relating to line of duty. The definition of "line of duty" in this regulation is confined to the purpose of this regulation and is completely distinct from usage under Section 2671, Title 28, United States Code (Definitions). It has no bearing on the meaning or application of the phrase "acting within the scope of his office or employment" as used in the context of Section 2671, Title 28, United States Code.

Applicability. This regulation applies to the Active Army, the Army National

Guard, and the U.S. Army Reserve; members of the Reserve Officers' Training Corps Simultaneous Membership Program; cadets of the U.S. Military Academy; and cadets and students enrolled in Senior Reserve Officers' Training Corps and applicants for enrollment while engaged in a flight or in flight instruction authorized by Section 2110, Title 10, United States Code, or while performing authorized travel to or from or while attending training or a practice cruise under Section 2109, Title 10, United States Code. (Section 8140, Title 5, United States Code) During mobilization the proponent may modify chapters and policies in this regulation.

Proponent and exception authority.

The proponent of this regulation is the Deputy Chief of Staff, G-1. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The Commanding General, U.S. Army Human Resources Command may also approve exceptions and waivers to this regulation. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency or a direct reporting unit or field operating agency of the proponent agency in the grade of colonel or civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer. All waivers requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through their higher headquarters to the policy

proponent. Refer to AR 25–30 for specific guidance.

Army management control process.

This regulation contains management control provisions in accordance with AR 11–2, but does not identify key management controls that must be evaluated.

Supplementation.

Supplementation of this regulation and establishment of command and local forms are prohibited without prior approval from the Deputy Chief of Staff, G-1 (DAPE-MP), 300 Army Pentagon, Washington, DC 20310–0300 or Commander, U.S. Army Human Resources Command (AHRC-PED-S), 200 Stovall St., Alexandria, VA 22332.

Suggested improvements.

Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to Commander, U.S. Army Human Resources Command (AHRC-PED-S), 200 Stovall St., Alexandria, VA 22332.

Distribution.

This publication is available in electronic media only and is intended for command levels A, B, C, D, and E for the Active Army, the Army National Guard of the United States, and the U.S. Army Reserve.

*This regulation supersedes AR 600–8–4, dated 15 April 2004.

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Glossary

Chapter 1 Introduction

Section I Information

1-1. Purpose

This regulation prescribes policies and procedures for investigating the circumstances of disease, injury, or death of a soldier. It provides standards and considerations used in determining line of duty (LD) status.

1-2. References

Required and related publications and prescribed and referenced forms are listed in appendix A.

1-3. Explanation of abbreviations and terms

Abbreviations and special terms used in this regulation are explained in the glossary.

Section II Responsibilities

1-4. Secretary of the Army

The Secretary of the Army (SA), or authorized designee, unless otherwise indicated in this regulation, reserves all powers, functions, and duties relating to LD determinations. The authority conferred by this provision will not restrict the designee from using self-discretion in referring any case to the SA for consideration and final decision.

1-5. Deputy Chief of Staff, G-1

The Deputy Chief of Staff, G-1 will—

- a.* Publish policies and procedures related to LD determinations.
- b.* Ensure LD investigations are accurate and timely.

1-6. Commanding General, U.S. Army Human Resources Command

The Commanding General (CG), U.S. Army Human Resources Command (USA HRC) will—

- a.* Have functional responsibility for LD determinations and act for the SA on all LD determinations and appeals referred to Headquarters, Department of the Army (HQDA) and all exceptions to procedures described in this regulation.
- b.* Take final action on all death cases.

1-7. Chief, National Guard Bureau

The Chief, National Guard Bureau (CNGB) will—

- a.* Be responsible for the LD investigation process within the Army National Guard (ARNG).
- b.* Act in the name of the SA as the final approving authority for the ARNG except for those soldiers in a Federalized status or attending an Active Army Service School. This authority may be delegated to a civilian employee whose regularly assigned duties are equal to the duties normally assigned field grade officers or field grade officers on duty with the National Guard Bureau (NGB). The CNGB may further name an alternate if the principal designee is absent. The alternate will be a field grade officer or a civilian employee of the NGB whose regularly assigned duties are equal to the duties normally assigned field grade officers. All delegations will be in writing and will remain valid until revoked in writing. To satisfy legal review during appeals, a copy of the delegation document will be included in all cases where delegated authority has been exercised.

1-8. Major continental U.S. Army commanders

The major continental U.S. (CONUS) Army commanders will supervise the LD investigation process under their jurisdiction. (See AR 600-8-1.)

1-9. Major overseas commanders and continental U.S. casualty area commanders

These commanders, as defined in AR 600-8-1, will—

- a.* Supervise the LD investigation process within their jurisdiction.
- b.* Ensure LD investigations are initiated promptly.
- c.* Ensure LD investigations are submitted in the proper format.

1-10. Final approving authority

The General Court-Martial Convening Authority (GCMCA)—

- a. Acts as final approving authority for formal LD investigations on behalf of the SA. Reviews LD investigations for compliance with this regulation.
- b. May delegate final approving authority in writing to a field grade officer on the staff of the GCMCA. A copy of the delegation document will be included in all cases where delegated authority has been exercised.
- c. May request approval from HQDA (AHRC-PEZ) that the final approving authority be a general officer in the chain of command who has access to military legal advice but does not have GCMCA.
- d. Except as provided in paragraph 1-14, final approving authority will act as "reviewing authority." The reviewing authority block on DD Form 261 (Report of Investigation — Line of Duty and Misconduct Status) will be annotated, "SAME AS FINAL APPROVING AUTHORITY."

1-11. Appointing authority

The LD appointing authority is normally the Special Court-Martial Convening Authority (SPCMCA) for the soldier who is the subject of the LD investigation. For the ARNG, the LD appointing authority should be a commander of at least a battalion- or squadron-size unit to which the soldier is assigned or attached at the time of the incident.

- a. The appointing authority may approve informal LD investigations except within the ARNG.
- b. The appointing authority may delegate all duties and responsibilities to the unit S-1 or other appropriate staff officer. All delegations will be in writing and will remain valid until revoked in writing. All delegations will be included with the LD investigation report.
- c. If the incident occurs—
 - (1) While the soldier is away from his or her unit (for example, on leave, in transit, absent without leave (AWOL)), the nearest Army unit with an SPCMCA will appoint and conduct the investigation. For ARNG soldiers who are not Federalized and/or not attending an Active Army Service School, the parent unit is responsible for the investigation.
 - (2) During a period when the soldier and his or her unit are training or on another exercise away from the parent installation, the unit commander and the parent installation are responsible for conducting the investigation. The host casualty area commander (CAC) and Medical Treatment Facility (MTF) commander will provide supporting documentation as requested.

1-12. Unit commanders

The unit commander will ensure DA Form 2173 (Statement of Medical Examination and Duty Status) is completed promptly and forwarded through channels to the appointing authority.

1-13. Medical Treatment Facility commanders

The MTF commander or an authorized representative (attending physician or patient administrator) will ensure that section 1 of DA Form 2173 is promptly completed when a condition outlined in paragraph 2-3 exists. The MTF commander makes determinations that involve—

- a. Total physical incapacitation of a soldier for more than 24 hours because of the abuse of alcohol or other drugs (para 4-10a).
- b. Conditions that existed prior to service (EPTS) and diseases not related to misconduct or negligence.

1-14. State Adjutants General

The state Adjutants General (AG) will function as the reviewing authority for ARNG.

1-15. Casualty area commander

Each CAC will ensure prompt completion of LD investigations.

Chapter 2 Line of Duty Determinations

2-1. General

Line of duty determinations are essential for protecting the interest of both the individual concerned and the U.S. Government where service is interrupted by injury, disease, or death. Soldiers who are on active duty (AD) for a period of more than 30 days will not lose their entitlement to medical and dental care, even if the injury or disease is found to have been incurred not in LD and/or because of the soldier's intentional misconduct or willful negligence, Section 1074, Title 10, United States Code (10 USC 1074). A person who becomes a casualty because of his or her intentional misconduct or willful negligence can never be said to be injured, diseased, or deceased in LD. Such a person stands to lose substantial benefits as a consequence of his or her actions; therefore, it is critical that the decision to categorize injury, disease, or death as not in LD only be made after following the deliberate, ordered procedures described in this regulation.

2-2. Reasons for conducting line of duty investigations

The following are reasons for conducting LD investigations:

a. Extension of enlistment. An enlisted soldier who is unable to perform duties for more than one day because of his or her intemperate use of drugs or alcohol or because of disease or injury resulting from the soldier's misconduct is liable after returning to duty to serve for a period that, when added to the period that he or she served before the absence from duty, amounts to the term for which he or she was enlisted or inducted (10 USC 972).

b. Longevity and retirement multiplier. Eligibility for increases in pay because of longevity and the amount of retirement pay to which a soldier may be entitled depends on the soldier's cumulative years of creditable service. An enlisted soldier who is unable to perform duties for more than one day because of his or her intemperate use of drugs or alcohol or because of disease or injury resulting from misconduct is not entitled to include such periods in computing creditable service in accordance with the Department of Defense Financial Management Regulation (DODFMR).

c. Forfeiture of pay. Any soldier on AD who is absent from regular duties for a continuous period of more than one day because of disease that is directly caused by and immediately following his or her intemperate use of drugs or alcohol is not entitled to pay for the period of that absence. Pay is not forfeited for absence from duty caused by injuries. Pay is not forfeited for disease not directly caused by and immediately following the intemperate use of drugs and alcohol.

d. Disability retirement and severance pay. For soldiers who sustain permanent disabilities while on AD to be eligible to receive certain retirement and severance pay benefits, they must meet requirements of the applicable statutes. One of these requirements is that the disability must not have resulted from the soldier's "intentional misconduct or willful neglect" and must not have been "incurred during a period of unauthorized absence" (10 USC 1201, 1203, 1204, 1206, and 1207). Physical Evaluation Board determinations are made independently and are not controlled by LD determinations. However, entitlement to disability compensation may depend on those facts that have been officially recorded and are on file within the Department of the Army (DA). This includes reports and investigations submitted in accordance with this regulation.

e. Medical and dental care for soldiers on duty other than AD for a period of more than 30 days. A soldier of the National Guard or U.S. Army Reserve (USAR) is entitled to hospital benefits, pensions, and other compensation, similar to that for soldiers of the Active Army for injury, illness, or disease incurred in LD, under the following conditions prescribed by law (10 USC 1074a):

- (1) while performing AD for a period of 30 days or less;
- (2) while performing inactive duty training;
- (3) while performing service on funeral honors duty under 10 USC 12503 or 32 USC 115;
- (4) while traveling directly to or from the place at which that soldier is to perform or has performed—
 - (a) active duty for a period of 30 days or less;
 - (b) inactive duty training; or
 - (c) service on funeral honors duty under 10 USC 12503 or 32 USC 115;
- (5) while remaining overnight immediately before the commencement of inactive duty training, or while remaining overnight, between successive periods of inactive duty training, at or in the vicinity of the site of the inactive duty training; or
- (6) while remaining overnight immediately before serving on funeral honors duty under 10 USC 12503 or 32 USC 115 at or in the vicinity of the place at which the soldier was to so serve, if the place is outside reasonable commuting distance from the soldier's residence.

f. Benefits administered by the Department of Veterans Affairs (DVA). In determining whether a veteran or his or her survivors or family members are eligible for certain benefits, the DVA makes its own determinations with respect to LD. These determinations rest upon the evidence available. Usually this consists of those facts that have been officially recorded and are on file within DA, including reports and LD investigations submitted in accordance with the provisions of this regulation. Statutes governing these benefits generally require that disabling injury or death be service connected, which means that the disability was incurred or aggravated in LD (38 USC 101). The statutory criteria for making such determinations are in 38 USC 105.

2-3. Requirements for line of duty investigations

Line of duty investigations are conducted essentially to arrive at a determination of whether misconduct or negligence was involved in the disease, injury, or death and, if so, to what degree. Depending on the circumstances of the case, an LD investigation may or may not be required to make this determination.

- a.* The LD determination is presumed to be "LD YES" without an investigation—
- (1) In the case of disease, except as described in paragraphs *c* (1) and (8) below.
 - (2) In the case of injuries clearly incurred as a result of enemy action or attack by terrorists.
 - (3) In the case of death due to natural causes or while a passenger in a common commercial carrier or military aircraft.

b. In all other cases of death or injury, except injuries so slight as to be clearly of no lasting significance (for example, superficial lacerations or abrasions or mild heat injuries), an LD investigation must be conducted.

c. Investigations can be conducted informally by the chain of command where no misconduct or negligence is indicated, or formally where an investigating officer is appointed to conduct an investigation into suspected misconduct or negligence. A formal LD investigation must be conducted in the following circumstances:

- (1) Injury, disease, death, or medical condition that occurs under strange or doubtful circumstances or is apparently due to misconduct or willful negligence.
- (2) Injury or death involving the abuse of alcohol or other drugs.
- (3) Self-inflicted injuries or possible suicide.
- (4) Injury or death incurred while AWOL.
- (5) Injury or death that occurs while an individual was en route to final acceptance in the Army.
- (6) Death of a USAR or ARNG soldier while participating in authorized training or duty.
- (7) Injury or death of a USAR or ARNG soldier while traveling to or from authorized training or duty.
- (8) When a USAR or ARNG soldier serving on an AD tour of 30 days or less is disabled due to disease.
- (9) In connection with an appeal of an unfavorable determination of abuse of alcohol or other drugs (para 4–10*a*).
- (10) When requested or directed for other cases.

2–4. Informal LD investigations

Documentation for an informal LD investigation typically consists of DA Form 2173 completed by the MTF and the unit commander and approved by the appointing authority, State AG, or higher authority. The final determination of an informal LD investigation can result in a determination of "in LD" only, except as provided in paragraph 4–8(c)(1). (See chap 3, sect I, for a detailed discussion of the informal LD investigation.)

2–5. Formal LD investigations

A formal LD investigation is a detailed investigation that normally begins with DA Form 2173 completed by the MTF and annotated by the unit commander as requiring a formal LD investigation. The appointing authority, on receipt of the DA Form 2173, appoints an investigating officer who completes DD Form 261 and appends appropriate statements and other documentation to support the determination, which is submitted to the GCMCA for approval. (See chap 3, sect II, for a detailed treatment of the formal LD investigation.)

2–6. Standards applicable to LD determinations

Decisions on LD determinations will be made in accordance with the standards set forth in this regulation.

a. Injury, disease, or death proximately caused by the soldier's intentional misconduct or willful negligence is "not in LD—due to own misconduct." Simple or ordinary negligence or carelessness, standing alone, does not constitute misconduct.

b. An injury, disease, or death is presumed to be in LD unless refuted by substantial evidence contained in the investigation.

c. Line of Duty determinations must be supported by substantial evidence and by a greater weight of evidence than supports any different conclusion. The evidence contained in the investigation must establish a degree of certainty so that a reasonable person is convinced of the truth or falseness of a fact, considering—

- (1) All direct evidence, that is, evidence based on actual knowledge or observation of witnesses; and/or
- (2) All indirect evidence, that is, facts or statements from which reasonable inferences, deductions, and conclusions may be drawn to establish an unobserved fact, knowledge, or state of mind.

d. No distinction will be made between the relative value of direct and indirect evidence. In some cases, direct evidence may be more convincing than indirect evidence. In other cases, indirect evidence may be more convincing than the statement of an eyewitness. The weight of the evidence is not determined by the number of witnesses or exhibits but by the investigating officer and higher authorities accomplishing the following actions:

- (1) Considering all the evidence.
- (2) Evaluating factors such as a witness's behavior, opportunity for knowledge, information possessed, ability to recall and relate events, and relationship to the matter to be decided.
- (3) Considering other signs of truth.

e. The rules in appendix B will be considered fully in deciding LD determinations. These rules elaborate upon, but do not modify, the basis for LD determinations.

Chapter 3 The Line of Duty Investigation Process

Section I Informal Line of Duty Investigations

3-1. General

The unit commander will conduct an informal LD investigation when the circumstances warrant or require one.

3-2. DA Form 2173

The MTF commander (attending physician or patient administrator) will initiate and complete section I of DA Form 2173. When appropriate, this section will show the nature and extent of the injury or disease. In the case of death, it will show the presumptive medical cause of death. The MTF will send the original DA Form 2173 to the soldier's unit commander for completion; a copy will be forwarded to the supporting military personnel office (MILPO) for information and monitoring. For ARNG, the MTF will send the original DA Form 2173 to the State MILPO for the soldier's unit if the soldier is not Federalized and/or attending an Active Army Service School. The unit commander will complete section 2 of DA Form 2173 to show duty status at the time and factual details of the incident.

3-3. Evidence collection

The investigation will ascertain dates, places, persons, and events definitely and accurately. It is essential to provide the appointing and approving authority with an accurate understanding or "word picture" of the incident being investigated. The commander must ensure that the investigation contains enough pertinent information and data to enable later reviews to be made without more information.

a. All findings of fact should be supported by exhibits. Copies of military or civilian police accident reports, pertinent hospitalization or clinical records, autopsy reports, and written statements shall be attached as exhibits (labeled A, B, C, and so forth), when appropriate. Written statements by the commander describing matters personally observed and learned are convenient means to document facts and, when appropriate, shall be attached.

b. Warning required before requesting statements regarding disease or injury.

(1) A soldier may not be required to make a statement relating to the origin, incurrence, or aggravation of his or her injury. Any involuntary statement against a soldier's interests, made by the soldier, is invalid (10 USC 1219). Any soldier, prior to being asked to make any statement relating to the origin, incurrence, or aggravation of any disease or injury that the soldier has suffered shall be advised of his or her right that he or she need not make such a statement. A statement voluntarily provided by the soldier after such advice may be considered. The soldier's right not to make a statement is violated if a person, in the course of the investigation, obtains the soldier's oral statements and reduces them to writing, unless the above advice was given first.

(2) If information concerning the incident is sought from the soldier, the soldier will be advised that he or she does not have to make any statement that is against his or her interest that relates to the origin, incurrence, or aggravation of any injury or disease he or she suffered. If any information is obtained from the soldier, a statement attesting the above warning was given must be attached to the DA Form 2173. Any written correspondence requesting information from the soldier will also contain the above warning and be attached to the DA Form 2173. If the soldier is also suspected or accused of any offense under the Uniform Code of Military Justice (UCMJ), the soldier should also be advised of his or her rights under UCMJ Art. 31 and right to counsel. A DA Form 3881 (Rights Warning Procedure/Waiver Certificate) should generally be used for such advice.

c. The commander will thoroughly review chapters 3 and 4 for any additional pertinent procedures or special considerations before conducting and completing the investigation.

d. Promptness in conducting the investigation is of great importance. Delays often result in failure to secure important data and information, possibly resulting in an improper determination.

3-4. Line of duty determination

a. The final determination of an informal LD investigation can result in a determination of "in LD" only, except for those cases described in paragraph 4-10.

b. The mere fact that the soldier was in an "authorized status" (duty, pass, leave, and so forth) does not support a determination of "in LD" in and of itself.

c. A determination of "in LD" may be entered by the commander only when it has been established that a formal LD investigation is not required.

d. A formal LD investigation is required if the injury, disease, or death occurred under unusual or doubtful circumstances; or if the person affected by the investigation (to include next of kin) requests one; or the complexity of the case warrants one; or for any other circumstance outlined in paragraph 2-3c.

e. If a formal LD investigation is required or requested, the unit commander need not enter the details of the incident in item 30, DA Form 2173; however, the reason a formal LD investigation is required will be entered.

3-5. Forwarding investigation

The commander will forward the investigation file to the appropriate appointing/approving authority for review and, if authorized, approval. The investigation file should be assembled as shown below.

- a. DA Form 2173 on top.
- b. Any of the following, if applicable:
 - (1) Statement or written correspondence indicating that the soldier was warned of his or her right not to make a statement.
 - (2) Police report.
 - (3) Medical documentation.
 - (4) Statements.
 - (5) ARNG: Copy of the training schedule for periods of inactive duty training (IDT) exceeding two days (such as a multiple unit training assembly five (MUTA-5)).
 - (6) ARNG: Copy of the training schedule for any period of IDT performed in a non-pay status.
 - (7) ARNG: Copy of annual training (AT) orders for periods of AT totaling less than 15 days.
 - (8) ARNG: Copy of orders for any period of full-time training duty (FTTD) performed under 32 USC 504 or 505.
 - (9) Other documentation pertinent to the investigation.

3-6. Actions by appointing/approval authority

The LD appointing authority is normally the SPCMCA (commander of at least a battalion- or squadron-size organization for ARNG) of the unit to which the person was assigned or attached at the time of the incident (para 1-11). Except within the ARNG, the appointing authority may approve informal LD investigations. Within the ARNG the reviewing authority approves informal LD investigations.

- a. The appointing authority must review all informal LD investigations to determine the proper action to be taken.
 - (1) If the DA Form 2173 indicates a formal LD investigation is required, then an investigating officer (IO) must be appointed immediately to conduct a detailed investigation.
 - (2) If the DA Form 2173 indicates "in line of duty" and "no formal investigation required," it will be reviewed to determine if sufficient evidence exists to support the determination. In appropriate cases, the assistance of the servicing judge advocate (JA) may be requested.
- b. The appointing or approving authority will check all LD investigations before they are forwarded. The purpose of the check is to determine whether all pertinent instructions have been followed. The investigation may be incomplete, or instructions may have not been followed. If so, the appointing authority will require compliance with instructions or valid reasons for noncompliance before forwarding the report.
- c. After the informal LD investigation has been reviewed, the approving authority will take action. "By Authority of the Secretary of the Army." (See table 3-1 for appropriate action.) Appropriate delegation of authority documents will be attached.
- d. Notification of completed actions will be accomplished per paragraph 3-12.
- e. When a formal LD investigation is required, requested, or otherwise deemed appropriate, the appointing authority must appoint an IO immediately.

Table 3-1
Processing informal investigations

Person: MTF commander (commander having physical or administrative responsibility for MTF in which the individual is treated or pronounced dead)

Action: Complete 5 copies of section 1, DA Form 2173. Send the original and 3 copies to the soldier's unit commander and 1 copy to the supporting MILPO. When USAR and ARNG personnel are injured during authorized training and are treated by a civilian doctor, the doctor and the unit commander should complete DA Form 2173. When the incident occurs while the soldier is away from his unit (that is, on leave, in transit, AWOL, and so forth), complete section 1, DA Form 2173 and send to the nearest Army unit that has an appointing authority (State MILPO for ARNG) in the area of the MTF. However, when the incident occurs during a period when the soldier and his or her unit are training or on another exercise away from the parent installation, complete section 1, DA Form 2173 and send to the parent installation CAC (State MILPO for ARNG). The MTF commander will provide supporting documentation requested by the parent installation, MILPO, or responsible unit commander. The MTF will send the original and 4 copies to the State MILPO for the soldier's unit if the soldier is not Federalized and/or attending an Active Army Service School. (See note 2.)

Completion time: 5 calendar days after incident or initial treatment (see note 1).

Person: Individual's unit commander

Action: Request DA Form 2173 from MTF, if not previously received.

Completion time: No later than 10 days after incident (see note 1).

Table 3-1
Processing informal investigations—Continued

Person: Individual's unit commander

Action: Complete section 2, DA Form 2173; attach support documents; and send original and 2 copies to the appointing authority for units in the area in which the incident occurred. U.S. Army Reserve units conducting LD investigations will submit the LD investigation to the CAC having jurisdiction over the area where the injury occurred for final processing.

Completion time: 30 calendar days after incident (see note 1).

Person: Appointing Authority

Action: Review the LD investigation for completeness and required documents.

a. If approved, annotate forms as follows (preceded by official designation of headquarters and date, and followed by signature and signature block):

(1) For disease, injury, or death (when appointing authority is the approving authority)— "Reviewed for completeness. In LD," followed by command line of "BY AUTHORITY OF THE SECRETARY OF THE ARMY." Retain 1 copy, send original to official military personnel file (OMPF) as follows: for officers—HQDA (AHRC-MSR), Alexandria, VA 22332-0444; for enlisted—Commander, U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249-5301; for USAR personnel—Commander, USA HRC, ATTN: ARPC-PASD, 1 Reserve Way, St. Louis, MO 63132-0505; for ROTC cadets—in accordance with AR 145-1. Send 1 copy each to the soldier's unit commander and the final approving authority. (See notes 2 and 3.)

(2) For disease, injury, or death (when appointing authority is not the approving authority), "Reviewed for completeness, In LD," followed by appropriate command line. Send original and 2 copies to the final approving authority.

b. If disapproved, direct a formal LD investigation.

Completion time: 35 calendar days after incident (see note 1).

Person: Final Approving Authority

Action: Review the LD investigation for completeness and required documents.

a. If approved, annotate as outlined under appointing authority.

(1) For disease or injury—Retain one copy, send original to OMPF, and 1 copy to the soldier's unit commander. An approved copy of LD investigation should be returned to the initiating MTF on all injuries on ARNG and USAR soldiers on AD for 30 days or less, or initial active duty training (IADT), when they are patients. For the ARNG, the final approving authority will retain the original (NGB or State AG). The State AG will indicate final action on all copies retained and forward copies to the U.S. Property and Fiscal Officer (USPFO) of the State, the unit commander for filing in the soldier's military personnel records jacket (MPRJ), and the soldier in accordance with paragraph 3-12. (See notes 2, 3.)

(2) For deaths—Retain 1 copy and send original and 1 copy through casualty reporting channels to HQDA (AHRC-PED-S), Alexandria, VA 22332.

b. If disapproved, return to the appointing authority and direct a formal LD investigation.

Completion time: 40 Calendar days after incident (see note 1).

Notes:

¹ If investigation extends beyond time limits, see paragraph 4-4.

² An extra copy of DA Form 2173 will be prepared for ARNG personnel attending service school under the jurisdiction of the Army or on ADT under the Reserve Enlistment Program of 1963 (REP-63). This copy will be filed in the individual's field MPRJ, which is returned to the State AG at the end of service school or ADT.

³ Accomplish notification actions required by paragraph 3-12.

Section II

Formal Investigations

3-7. Investigating officer

When a formal LD investigation is to be conducted, an IO must be appointed in writing. The IO may be a commissioned officer, warrant officer, or a commissioned officer of another U.S. military service in joint activities where the Army has been designated as the executive agent. The IO will be senior in grade to the soldier being investigated, except where the appointing authority determines that it is impracticable because of military exigencies (but not because of mere inconvenience).

3-8. Investigation

a. The procedures for formal boards of officers and investigations contained in AR 15-6, chapter 5, are not applicable to formal LD investigations. However, the general guidance of AR 15-6, chapter 5, applies unless this regulation provides more specific or different guidance.

b. The IO must be free from bias or prejudice. The IO should never begin the investigation with predetermined ideas as to the cause of the injury, disease, or death. To make a thorough and impartial investigation, the IO should determine the actual facts, not as reported, but as they actually occurred, as far as possible. The IO should then be able to make an intelligent and accurate determination. Promptness is crucial in conducting and completing the investigation. Delays often result in the failure to secure important information.

c. The DA Form 2173 will be prepared as follows:

(1) The MTF commander (attending physician or patient administrator) will initiate and complete section 1, DA Form 2173. This section will show the nature and extent of the injury or disease. In the case of death, it will show the presumptive medical cause of death. The MTF will send the original DA Form 2173 to the soldier's unit commander for completion and a copy will be forwarded to the supporting MILPO for information and monitoring. For ARNG, the MTF will send the original DA Form 2173 to the State MILPO.

(2) The unit commander will complete section 2, DA Form 2173, to show duty status at the time of the incident. If the soldier was AWOL at the time of death, injury, or onset of disease, the information below will be included in the remarks section of DA Form 2173.

- (a) Normal duty assignment.
- (b) The scheduled hours of duty (including length of duty week).
- (c) If absent because of breaking restriction, the date and hour the soldier was informed of the restriction.
- (d) If the soldier's pass privileges were revoked, when, why, and for how long.
- (e) If reported absent for overstaying leave or pass, the hours and effective dates of the leave or pass and the time the unauthorized absence began.
- (f) If reported absent for taking another route, explain the authorized route and the deviation.
- (g) When a person must be at a specific location between given hours, the part of the directive that sets the requirements will be extracted and attached to the DA Form 2173.

(3) If the IO was not provided the completed DA Form 2173 by the appointing authority, the IO will request it from the unit commander. If the unit commander has not completed the form or obtained it from the MTF, the unit commander is responsible for requesting it from the MTF. Sections 1 and 2 must be completed. In cases requiring a formal investigation, the commander need not enter the details of the incident in item 30 only the reason a formal investigation is required. The IO will provide the details of the incident when completing DD Form 261.

d. A warning is required before requesting statements regarding disease or injury. (See para 3-3b.)

e. The IO will collect the evidence as follows:

(1) The IO will ascertain dates, places, persons, and events definitely and accurately. It is essential to provide the appointing, reviewing, and final approving authorities with an accurate understanding of the incident being investigated. The IO must ensure that the investigation contains enough pertinent information and data to enable later reviews to be made without more information.

(2) All findings of fact must be supported by exhibits. Written statements by the IO describing matters personally observed and learned by the IO are convenient means to document facts and, when appropriate, will be attached; however, a statement by the IO should not be used as a substitute for witness statements when they can be obtained. The following is provided as a convenient checklist of evidence that should be included (as applicable) in formal reports of investigation concerning misconduct and LD under the provisions of this regulation:

(a) The complete name, grade, social security number, organization, and station of the soldier killed, suffering from a disease, or injured as a result of an incident or the event under investigation.

(b) All facts leading up to and connected with an injury, disease, or death.

(c) Copies of military or civilian police reports, pertinent hospitalization or clinical records, autopsy reports, records of coroner's inquests or medical examiner's reports, pathological and toxicological studies, and boards of inquiry for missing persons.

(d) Complete information concerning the site and terrain where the incident in question occurred, and photographs, maps, charts, diagrams, or other exhibits that may be deemed helpful to a complete understanding of the incident.

(e) All pertinent facts with respect to the duty, leave, pass, or unauthorized absence status of an individual at the time of the incident resulting in his injury or death.

(f) Complete information as to the person's status in relation to extended AD, ADT, IDT, and so forth (or travel to or from such duty), at the time of the incident, when the person involved is a soldier of a Reserve Component.

(g) Evidence regarding the state of intoxication and the extent of impairment of the physical or mental faculties of any person involved and connected with the incident, when relevant. Evidence as to the general appearance and behavior, clear and rational speech, coordination of muscular effort, and all other facts, observations, and opinions of others bearing on the question of actual impairment shall be made to determine the quantity and nature of the intoxication agent used and the period of time over which used by the person. Results of any blood, breath, urine, or tissue tests for the intoxicating agent should also be obtained and submitted as exhibits (actual lab slip, if possible).

(h) Evidence regarding the mental competence or impairment of the deceased or injured person, when relevant. In all cases of suicide or attempted suicide, all possible evidence bearing on the mental condition of the deceased or injured person shall be obtained. This will include all available evidence about the person's social background, his or her actions and moods immediately prior to the suicide or suicide attempt, any troubles that might have motivated the incident, and any pertinent examination or counseling by specially experienced or trained persons. Personal notes or diaries of the deceased are valuable evidence. In the case of a death by suicide or a death resulting from an accident involving unusual or suspicious circumstances (for example, a single car motor vehicle accident) or where the cause of

death is not clear, obtain the opinion of a mental health officer as to the probable causes of the self-destructive behavior and whether the soldier was mentally sound at the time of the incident. (See para 4-11b.)

(i) Documentation that statements solicited from an injured soldier with respect to the incurrence or aggravation of his or her disease or injury are in compliance with paragraph 3-3b.

(j) Additional pertinent procedures or special considerations as outlined in chapter 4 should be reviewed before conducting and completing the investigation.

f. The DD Form 261 will be prepared as follows:

(1) The IO will prepare the report on DD Form 261.

(2) The report will be unclassified when possible. Classified material will not be attached unless it is material to the investigation.

(3) The information below will be included in item 10g, DD Form 261, when appropriate. If additional space is needed, the IO may attach a continuation sheet identifying, at the top, the name of individual concerned, social security number, and date of injury, death, or onset of disease.

(a) Summary of circumstances and basis for determination.

(b) Clarification of any discrepancy in the date and place of injury or death or in the evidence as to the duty status of the soldier.

(c) Reason for not interviewing the person whose LD status is being investigated or any witnesses whose testimony may be material.

(d) Comments of the IO on the credibility of statements of witnesses.

(e) List of exhibits.

(4) Documentation will be lettered and attached as exhibits to DD Form 261 in the order below.

(a) Instrument that appointed the IO.

(b) DA Form 2173.

(c) Documentation attesting that statements solicited from an injured soldier regarding the incurrence or aggravation of his disease or injury are in compliance with paragraph 3-3b.

(d) Copy of orders to active duty or periodic advance training scheduled for guardsmen and reservists on AD or Reserve duty training.

(e) Report of autopsy findings. This includes blood alcohol results and toxicology studies.

(f) Report of inquest.

(g) Statements of witnesses and person being investigated.

(h) Photographs, maps, charts, and so forth, if relevant.

(i) Copy of letter of sympathy written to the next of kin in death cases.

(j) Statement or medical form from medical authorities on period of hospitalization because of injury or disease.

Additional medical forms or statements should only be used when the information in section I, DA Form 2173 is inadequate to complete a formal investigation.

(k) Any other exhibits relevant to the case.

(5) A copy of each exhibit will be attached to each copy of the LD report and indexed. When possible, the original copy of each exhibit will be attached to the original of the report. When an original document is illegible or requires translation, a typed copy of the original may be prepared. The original document and the typed copy will be attached to the LD report. Copies of exhibits may be attached to the original of a report only when the original exhibit is required to be filed elsewhere, or the documents are the personal property of individuals or estates (for example, personal letters or suicide notes addressed to certain persons). These documents should be photocopied or duplicated when possible. All exhibits attached to the LD report, which are not originals, must be legible.

(6) If an adverse determination is contemplated against the soldier, based upon information obtained in the investigation, the IO will notify the soldier, in writing, of the proposed adverse determination and provide a copy of the investigation and the supporting evidence. The soldier will be warned per paragraph 3-3b and given a reasonable opportunity to reply, in writing, and to offer rebuttal. Certified mail should be used and the mailing receipt and return receipt (if any) attached to the LD investigation. If no response is received, the IO may conclude the investigation and finalize his or her determination. If a response is received, the IO will review and evaluate the soldier's response prior to making the final determination.

(7) When the IO has completed the investigation and prepared the report, the IO will mark the appropriate LD determination in item 11 of DD Form 261 in cases involving injury, disease, and death. In every formal LD investigation, the IO will determine if there is substantial evidence of misconduct or willful negligence to support a decision of "not in line of duty-due to own misconduct." To arrive at such decisions, the rules in appendix B will be fully considered. The IO will complete the box to the right of item 11 and send the report to the appointing authority.

3-9. Actions by appointing authority

The appointing authority will take the following actions:

a. Check all LD investigations before they are forwarded. The purpose of the check is to determine whether all

pertinent instructions have been followed. The investigation may be incomplete or instructions may not have been followed. If so, appointing authorities will require compliance with instructions or valid reasons for noncompliance before forwarding the report.

b. Refer the report of investigation to the servicing JA for legal review and opinion. The ARNG will refer ARNG reports of investigation to a JA or licensed attorney (non-JA) soldier of the ARNG, designated by the State AG. The legal opinion rendered will be attached to the investigation. The JA's review will—

(1) Determine whether legal requirements are in compliance.

(2) Ascertain if any error exists and if so, whether such error has a material or adverse effect on any individual's rights.

(3) Determine whether the determination of the investigation is supported by substantial evidence or lack of evidence.

(4) Examine the investigation to see if potential claims may be involved. This is of special concern where medical care has been furnished and the Government may be entitled to recover third party medical claims.

c. Complete the appropriate blocks on the DD Form 261, approving or disapproving the determination of the IO. In no case, however, will the appointing authority "disapprove" without stating the reasons for disapproval and giving the new determination. If the proposed new determination is different from that of the IO and adverse to the soldier, the soldier will be advised by the appointing authority in the same manner as provided in paragraph 3-8f(6). The identity of the headquarters must be clear and include a complete address. Attach delegation of authority documents, if applicable, and forward the report of investigation to the approving authority (reviewing authority in the ARNG).

3-10. Actions by reviewing authority (Army National Guard)

The ARNG reviewing authority will take the following actions:

a. Review the investigation for completeness and accuracy. The report of investigation may be returned through review channels for corrective action, if necessary.

b. Complete the appropriate blocks on the DD Form 261, approving or disapproving the determination of the appointing authority. In no case, however, will the reviewing authority "disapprove" without stating the reasons for disapproval and giving the new determination. If the new proposed determination is adverse to the soldier and the soldier has not been previously advised of the adverse determination per paragraph 3-8f(6), the soldier will be so advised and his or her response, if any, will be considered before taking action. The identity of the headquarters must be clear and include a complete address. Attach delegation of authority documents, if applicable, and forward the report of investigation to the final approving authority.

3-11. Actions by final approving authority

The final approving authority will take the following actions:

a. Review the investigation for completeness and accuracy. The report may be returned through review channels for corrective action, if necessary.

b. Make entries in block 15 and block 21 of DD Form 261. The final approving authority will approve or disapprove the determination of the lower headquarters "By Authority of the Secretary of the Army." In no case, however, will the final approving authority "disapprove" without stating the reasons for disapproval and giving the new determination. If the new proposed determination is adverse to the soldier and the soldier has not been previously advised of the adverse determination per paragraph 3-8f(6), the soldier will be so advised and his or her response, if any, will be considered before taking action.

c. Identify clearly the headquarters and include a complete address.

d. Include a copy of the delegation document for officers acting with delegated authority in the LD case file to preclude future questions about their legal authority to act under this regulation.

3-12. Disposition of completed actions

Reports of investigation will be disposed of as shown in tables 3-1 and 3-2.

a. In death cases, HQDA (AHRC-PED-S), Alexandria, VA 22332 will be provided a copy of the completed LD investigation.

b. In injury or disease cases, the final approving authority will inform the individuals below of the results—

(1) *The person who was investigated.* The report will be mailed to the commander of the station or unit where the soldier was last known to be assigned. Request that it be forwarded to the soldier if he or she has been transferred. The person's station or unit commander will ensure that the soldier signs for the delivered LD investigation. When appropriate, certified mail should be used and the mailing receipt and return receipt (if any) attached to the LD investigation. The approving authority will withdraw exhibits that contain classified information and Criminal Investigation Division (CID) reports before sending the report of investigation. The approving authority will note on DD Form 261 that the soldier's copy has been furnished and include the date. The soldier's copy will be sent by letter. It will inform the soldier—

(a) Of his or her right to appeal an adverse determination as provided in paragraph 4–17 and of his/her right not to make a statement as provided in paragraph 3–3b.

(b) If documents have been withdrawn, why it was done, and who is the release authority. The release authority for CID reports is the Commander, U.S. Army Criminal Investigation Command, 5611 Columbia Pike, Falls Church, VA 22041–5015.

(2) *The appropriate assignment division.* The appropriate assignment division (see AR 600–8–104 for addresses) for all officers and warrant officers on active duty for more than 30 days, when the final determination is not in line of duty.

(3) *The USAR soldier.* In the case of USAR soldiers who have returned home after completion of active duty for training (ADT), IADT, AT, FTTD, or IDT, the final approving authority will inform the individual through the Commander, USA HRC, 1 Reserve Way, St. Louis, MO 63132–5200.

c. Notification letters returned to the final approving authority undelivered will be forwarded by letter as described below. The letter will request that the notification letter, including the copy of LD report of investigation, be sent to the soldier.

(1) For officers, send to HQDA (AHRC–MSR), Alexandria, VA 22332–0444.

(2) For enlisted personnel, send to the Commander, U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249–5301.

Table 3–2
Processing formal investigations

Person: MTF commander (commander having physical or administrative responsibility for the MTF in which soldier is treated or pronounced dead)

Action: Complete 5 copies of section 1, DA Form 2173. Send the original and 3 copies to the soldier's unit commander and 1 copy to the supporting MILPO. An extra copy of DA Form 2173 will be prepared for ARNG personnel attending Service school under the jurisdiction of the Army or on ADT under the Reserve Enlistment Program of 1963 (REP–63). This copy will be filed in the soldier's field MPRJ, which is returned to the State AG at the end of service school or ADT. For USAR and ARNG personnel who are injured during IDT and are treated by a civilian doctor, the doctor and the unit commander should complete DA Form 2173. When the incident occurs while the soldier is away from his unit (that is, on leave, in transit, AWOL, and so forth), complete section 1, DA Form 2173, and send to the nearest Army unit with an appointing authority (State MILPO for ARNG) in the area of the MTF. However, when the incident occurs during a period when the soldier and his unit are training or on another exercise away from the parent installation, complete section I, DA Form 2173, and send to the parent installation CAC (State MILPO for ARNG). The MTF commander will provide the supporting documentation requested by the parent installation, MILPO, or responsible unit commander. The MTF will send the original and 4 copies to the State MILPO for the soldier's unit if the soldier is not Federalized and/or attending an Active Army Service School.

Completion time: 5 calendar days after incident or initial treatment (see note 1).

Person: Individual's unit commander

Action: Request DA Form 2173 from MTF if not previously received.

Completion time: No later than 10 days after incident (see note 1).

Person: Individual's unit commander

Action: Complete section 2, DA Form 2173; attach supporting documents; and send original and 3 copies to the LD appointing authority.

Completion time: 30 calendar days after incident (see note 1).

Person: Appointing Authority

Action: Appoint a disinterested officer in writing to conduct the investigation. The same officer should be appointed to investigate all injuries or deaths that occurred as a result of a single incident. Officers who can offer evidence in the case and soldier's unit commander will not be appointed as the investigating officer. (The investigating officer may also be appointed to investigate a claim or possible future claim in accordance with AR 27–20 if a separate claim's investigation is required. The LD investigation will be in lieu of the investigation by a claims officer required by AR 27–20 if the injury or death of the person whose LD status is being investigated is the only basis for claim against the Government of other party or agency.)

Completion time: 35 calendar days after incident (see note 1).

Person: Investigating officer

Action: Conduct a formal LD investigation as outlined in this regulation, make a report on DD Form 261, and send original and 3 copies to the appointing authority.

Completion time: 50 calendar days after incident (see note 1).

Person: Appointing Authority

Action: Review the investigation and complete the block titled "Action by the Appointing Authority" on DD Form 261. Retain 1 copy of the report and send the original and 2 copies to the final approving authority (or reviewing authority for ARNG). When the soldier is in the ARNG on duty under 32 USC 503, 504, or 505, the appointing authority will send the original and 2 copies of the report of investigation to the State MILPO from which the individual was ordered to duty. The State AG is the reviewing authority. USAR units conducting LD investigations will submit the LD investigation to the CAC having jurisdiction over the area where the injury occurred for final processing. (See note 2.)

Completion time: 65 calendar days after incident (see note 1).

Table 3–2
Processing formal investigations—Continued

Person: Reviewing Authority (ARNG only)

Action: Review the investigation, complete the block titled "Action by the Reviewing Authority" (see notes 2 and 3) on DD Form 261, and send the original and 2 copies to final approving authority.

Completion time: 70 calendar days after incident (see note 1).

Person: Final Approving Authority

Action:

a. Review the LD investigation and enter the official designation of the headquarters, the date, approval or disapproval of the determination (see below), signature, and signature block. (See note 3.) For disease, injury, or death, use one of the following:

(1) If approved, BY AUTHORITY OF THE SECRETARY OF THE ARMY;

(2) If disapproved, substitute the following: Reasons for disapproval are: (give reasons) BY AUTHORITY OF THE SECRETARY OF THE ARMY

b. Distribute as follows:

(1) Death—Retain one copy and send the original and one copy to HQDA (AHRC–PED–S), Alexandria, VA 22332. (See note 4.)

(2) Disease or injury—Retain one copy and send original to the custodian of the soldier's OMPF. For officers: HQDA (AHRC–MSR), Alexandria, VA 22332–0444; for enlisted: Commander, U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249–5301; for USAR personnel: Commander, USA HRC, 1 Reserve Way, St. Louis, MO 63132–5200; for ROTC cadets: in accordance with AR 145–1; and one copy to the soldier being investigated. (See note 4.)

c. Criminal Investigation Division reports and classified material will not be included in the copy sent to the soldier.

d. If determination is "not in LD," final approving authority must also take appeal action in paragraph 4–17.

e. A copy of an LD investigation should be returned to the initiating MTF on all injuries concerning USAR and ARNG soldiers on AD for 30 days or less, or IADT, when they are patients.

f. The CNGB will retain the original. The CNGB will return one copy to the State AG. The State AG will annotate all copies to show final action taken by the CNGB and distribute one copy to each of the following:

(1) CNGB for file.

(2) State USPFO.

(3) Unit commander for file in the soldier's MPRJ.

(4) The soldier in accordance with paragraph 3–12.

Completion time: 75 calendar days after incident (see note 1).

Notes:

¹ If investigation extends beyond time limits, see paragraph 4–4.

² The appointing, reviewing, and final approving authorities may change a previous determination. When a determination is changed, the reasons for that change will be shown on the back of DD Form 261, if there is not enough room on the front.

³ Except for ARNG cases, enter "SAME AS FINAL APPROVING AUTHORITY" in the block title, "Action by Reviewing Authority."

⁴ Accomplish notification actions required by paragraph 3–12.

Chapter 4

Special Considerations and Other Matters Affecting Line of Duty Investigations

4–1. Relationship to disciplinary or other administrative actions

An adverse LD determination is an administrative determination and not a punitive or judicial action. Disciplinary and other administrative actions, if warranted, shall be taken independently of any LD determination. A favorable determination does not preclude separate disciplinary or administrative actions. An LD determination is not binding on the issue of guilt or innocence of the soldier in a separate disciplinary action, the issue of pecuniary liability in a report of survey, or any other administrative determination.

4–2. Criminal Investigation Division and safety investigations

A summary of any report by Army CID agents may be used as evidence in an LD investigation if necessary to complete the investigation. Accident and safety investigations and reports conducted under AR 385–40 may not be used as evidence or to obtain evidence in determining the LD status of a soldier.

4–3. Combining investigations

There is no prohibition against using the same IO to conduct—

a. An LD investigation for more than one person involved in the same incident. A separate investigation must be completed for each person involved.

b. A report of survey or other investigation in conjunction with the conduct of an LD investigation. Similarly,

subject to the requirements of paragraph 3–3*b* and the limitations of paragraph 4–2, information, statements, and exhibits from other investigations may be included in an LD investigation.

4–4. Time limitations for processing line of duty actions

Line of duty actions should be completed within the time limits given in tables 3–1 and 3–2. When an LD investigation, either formal or informal, is not completed within the given time, the reasons the report is late should be made part of the remarks section of DA Form 2173 for informal reports and as part of the investigating officer's comments on DD Form 261 for formal reports. These comments can be expanded upon as necessary by the appointing authority, reviewing authority, or final approving authority. The mere failure to complete an action within the prescribed time or the failure to provide reasons the report is late is not a basis to disapprove, reverse, or change an otherwise proper determination.

4–5. Legal support

Although LD investigations result in administrative determinations, both the soldier and the IO may obtain legal advice from the supporting Judge Advocate General's office (or licensed attorney-member of the ARNG designated by the State AG) during the course of the investigation to determine how the facts should be presented and to ensure that all pertinent facts are revealed. Support may also be provided if the IO experiences difficulties in obtaining reports and records from various civilian agencies. The purpose of legal advice is to protect both the rights of the soldier and of the Government during the conduct of the investigation. Sworn statements, formal hearings, and verbatim transcripts are not required, and the soldier has no right to cross-examine witnesses. However, prior to recommending or approving any determination other than "in line of duty," evidence against the soldier must be presented to him or her as prescribed in paragraph 3–8*f*(6).

4–6. Civilian reports and records

During the course of the investigation, it may be necessary to obtain civilian police reports, medical records, coroner's reports, and so forth. This information normally is provided to the Provost Marshal's office or the MTF's patient administrator. The IO should request that military authorities obtain this information for him or her if the IO is experiencing difficulties. Assistance and legal support may also be sought from the servicing JA.

4–7. Unauthorized absence

a. Any injury or disease incurred while the soldier is AWOL will be handled as "not in line of duty" unless the soldier was mentally unsound at the inception of the unauthorized absence. If there is no further misconduct shown other than AWOL, the correct determination is "not in line of duty—not due to own misconduct." To establish that a person was AWOL for LD purposes, it must be shown that the soldier—

- (1) Voluntarily left his or her unit or organization or other place of duty without proper authority, or
- (2) Was absent from a scheduled duty or restriction at the time of injury or disease.

b. A requirement that a person be present at a specific time and place is an administrative restriction for LD purposes. To confirm this, the pertinent part of the directive stating this requirement should be attached to the report of investigation.

c. If the driver of a Government vehicle on an authorized trip is injured during an unjustified deviation from his or her assigned route, the driver should be considered AWOL for LD purposes.

d. Except as provided in *e* below, the immediate commander's (company, equivalent unit, or higher level) findings of the soldier's duty status at the time of the injury, disease, or death is final.

e. Absences that are initially considered AWOL may be changed by the proper authority. (See AR 630–10 for guidance.)

f. If a soldier has been granted leave or special pass, he or she will not be considered AWOL if he or she fails to sign out.

4–8. Medical treatment

The following information addresses venereal disease, pregnancies and abortions, hernias, surgical operations and treatments, conditions that existed prior to service, and presumptions concerning injuries and diseases:

a. Venereal disease. Venereal disease alone will not support a misconduct determination if the soldier has complied with the regulations requiring the soldier to report and receive treatment for such disease. Unless otherwise directed by the MTF commander, an LD investigation is not required. When the condition existed before military service and was not aggravated by it, the determination will be "not in LD—not due to own misconduct."

b. Pregnancies and abortions. Pregnancy and related diagnoses are exempt from LD investigations. Induced abortions that are not performed in accordance with local law will be subject to a formal LD investigation when complications or after effects, affect duty performance.

c. Hernia.

(1) Soldiers on AD who develop a hernia will be considered to have acquired the hernia "in LD" unless it was documented at the time of entry into the Service.

(2) Soldiers of the USAR and ARNG, while in an authorized duty status, will be considered to have acquired or aggravated the hernia "in LD" if the following conditions exist:

(a) There was no evidence of the hernia at the time of the examination before entering on such duty (if examination was performed).

(b) There is evidence of accident or other circumstances occurring while on duty sufficient to cause the hernia or aggravation of the hernia.

d. Operations and treatment.

(1) The LD determination for surgery or treatment of an injury or disease generally will be the same as that required for the initial injury or disease.

(2) Any ill effect directly caused by treatment, anesthetic, or surgery will be considered—

(a) "In LD" if such treatment, anesthetic, or surgery was not a criminal offense under Federal or State law and was administered or performed by an authorized person.

(b) "Not LD—not due to own misconduct," if such was administered or performed while AWOL. If performed on a soldier of the Reserve Component, not on AD for a disease that was contracted while the soldier was in a status defined in paragraph 2–2e, the determination is "not in LD—not due to own misconduct."

e. Injury or disease prior to service.

(1) The term "EPTS" is added to a medical diagnosis. It shows that there is substantial evidence that the disease or injury, or underlying condition existed before military service or it happened between periods of active service. Included in this category are chronic diseases with an incubation period that clearly precludes a determination that it started during short tours of authorized training or duty.

(2) The doctor, during examination and treatment of the soldier, usually determines an EPTS condition. The doctor annotates the soldier's medical records as to whether the condition existed prior to service. If an LD determination is required, information from the medical records will be used to support a determination that an EPTS condition was or was not aggravated by military service. If an EPTS condition was aggravated by military service, the determination will be "in LD." If an EPTS condition is not aggravated by military service, the determination will be "not in LD—not due to own misconduct."

(3) Specific findings of natural progress of the pre-existing injury or disease based upon well-established medical principles alone are enough to overcome the presumption of Service aggravation.

f. Injury or disease while not on AD or in a status defined in paragraph 2–2e.

(1) A soldier is presumed to have been in sound physical and mental condition upon entering AD or status in paragraph 2–2e. To overcome this, it must be shown by substantial evidence that the injury or disease, or condition causing it, was sustained or contracted while neither on AD nor in authorized training. The following will be sufficient evidence of EPTS:

(a) Lesions or symptoms of chronic disease so near the date of entry on AD or authorized training that they could not have started after entry, or

(b) Disease within less than the minimum incubation period after entry on AD or authorized training.

(2) It is further presumed that, even if the provisions of *f*(1) above are overcome by such evidence, any other condition, resulting from the pre-existing injury or disease, was caused by service aggravation. Specific findings of natural progress of the pre-existing injury or disease based upon well-established medical principles, as distinguished from medical opinion alone are enough to overcome the presumption of Service aggravation.

(3) Any physical condition having its inception in line of duty during one period of Service or authorized training in any of the Armed Forces that recurs or is aggravated during later Service or authorized training, regardless of the time between, should be in line of duty. The aggravated condition must not be caused by misconduct or willful negligence.

4–9. Traveling

In determining whether the disability or death of a soldier was caused by any injury while traveling directly to or from AD or duties defined in paragraph 2–2e, consider—

a. Whether training was authorized or required, that is, complying with orders.

b. The hour travel began.

c. The time when the soldier was scheduled to arrive for duty, or when the soldier ceased to perform such duty.

d. The method of travel.

e. The travel time authorized.

f. Whether the best or most direct route was used.

g. The immediate cause of injury or death.

h. If death was due to disease, whether it existed before discharge or release, or whether it was contracted on or aggravated by AD or duties defined in paragraph 2–2e.

4-10. Intoxication and drug abuse

a. That portion of time in the hospital that a doctor determines a soldier to be totally physically incapacitated for more than 24 consecutive hours solely because of alcohol or drug abuse will be “not line of duty—due to own misconduct.” Total physical incapacitation means the soldier is so disabled by the drugs or alcohol that he or she is comatose. The remainder of the period of hospitalization, treatment, or rehabilitation will be administrative absence from duty and does not require an LD determination. (Hospitalization of less than 24 hours for abuse of alcohol or other drugs does not require an LD determination.) When the person is released from the MTF, the MTF commander or commander designee will inform the soldier and the soldier’s unit commander in writing of the LD determination. To preclude unauthorized access to this information, the memorandum will be transmitted in a sealed envelope marked: EXCLUSIVELY FOR the unit commander of the individual concerned and will comply with AR 340-21. The LD determination may be appealed under paragraph 4-17 to the unit commander. In appealed cases, the MTF will prepare DA Form 2173 upon request of the unit commander.

b. An injury incurred as the “proximate result” of prior and specific voluntary intoxication is incurred as the result of misconduct. For intoxication alone to be the basis for a determination of misconduct with respect to a related injury, there must be a clear showing that the soldier’s physical or mental faculties were impaired due to intoxication at the time of the injury, the extent of the impairment, and that the impairment was a proximate cause of the injury.

c. Development of a disease that may be a result of the abuse of alcohol or other drugs is not intentional misconduct within the meaning of 10 USC 1207. It would be considered as “in line of duty.”

4-11. Mental responsibility, emotional disorders, suicide, and suicide attempts

a. The MTF must identify, evaluate, and document mental and emotional disorders. A soldier may not be held responsible for his or her acts and their foreseeable consequences if, as the result of mental defect, disease, or derangement, the soldier was unable to comprehend the nature of such acts or to control his or her actions. Therefore, these disorders are considered “in LD” unless they existed before entering the Service and were not aggravated by military service. Personality disorders by their nature are considered as EPTS.

b. Line of duty investigations of suicide or attempted suicide must determine whether the soldier was mentally sound at the time of the incident. The question of sanity can only be resolved by inquiring into and obtaining evidence of the soldier’s social background, actions and moods immediately prior to the suicide or suicide attempt, troubles that might have motivated the incident, and examinations or counseling by specially experienced or trained persons. Personal notes or diaries of a deceased soldier are valuable evidence. In all cases of suicide or suicide attempts, a mental health officer will review the evidence collected to determine the bio-psychosocial factors that contributed to the soldier’s desire to end his or her life. The mental health officer will render an opinion as to the probable causes of the self-destructive behavior and whether the soldier was mentally sound at the time of the incident.

c. If the soldier is found mentally unsound, the mental health officer should determine whether the soldier’s mental condition was an EPTS condition aggravated by Service or was due to the soldier’s own misconduct. Those conditions occurring during the first six months of AD may be considered as EPTS, depending on history.

d. In cases of suicide or attempted suicide during AWOL, mental soundness at the inception of the absence must also be determined.

e. An injury or disease intentionally self-inflicted or an ill effect that results from the attempt (including attempts by taking poison or drugs) when mental soundness existed at the time should be considered misconduct.

4-12. Line of duty policy and procedures for active duty deaths before 10 September 2001

An LD determination is not required for AD deaths before 10 September 2001, but may require an LD investigation. The statement “REVIEWED FOR COMPLETENESS; NO DETERMINATION MADE,” will be entered in block 30 of DA Form 2173 for informal LD investigations and block 15 of DD Form 261 for formal LD investigations for pre-10 September 2001 deaths.

4-13. Line of duty policy and procedures for active duty deaths on or after 10 September 2001

a. All AD deaths on or after 10 September 2001 require—

(1) An LD determination.

(2) An informal or formal LD investigation, except deaths that are the result of combat, enemy action, attack by terrorists or other forces antagonistic to the interests of the United States, or in friendly-fire incidents, or while a prisoner of war. However, an LD determination must be rendered in all death cases even when an LD investigation is not required.

b. For purposes of this regulation, AD is full-time duty in the active military service of the United States. Such term includes FTTD, annual training duty, and attendance while in the active military service, at a school designated as a service school by law or by the SA. Such term does not include full-time National Guard duty. (10 USC 101(d)(1)). This includes reserve soldiers on AD for annual training duty whether their orders specify a period of more than 30 days. Reserve soldiers serving periods of IDT are not included. In accordance with 10 USC 12602, Full-Time National Guard Duty (FTNGD) under 32 USC, will be treated as AD for this purpose and is defined as training or other duty,

other than inactive duty, performed by a soldier of the Army National Guard of the United States (ARNGUS) in the soldier's status as a soldier of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia for which the soldier is entitled to pay from the United States or for which the soldier has waived pay from the United States.

c. For purpose of rendering an LD determination in death cases, a soldier's death will be considered to have occurred in LD unless—

- (1) The death occurred while the soldier was not serving on AD, or
- (2) The death was the result of the soldier's intentional misconduct or willful negligence, or
- (3) The death occurred during a period of unauthorized absence.

d. If intentional misconduct or willful negligence or unauthorized absence is involved with an AD death, then a formal LD investigation is required. Otherwise, an informal LD investigation is sufficient.

(1) An informal or formal LD investigation for a death will describe in block 30 of DA Form 2173 or block 10 of DD Form 261, respectively, all of the following (continuation sheets may be used):

- (a) The circumstances under which the soldier died, to include whether the soldier was serving on AD, and
- (b) If the death was caused by the soldier's own intentional misconduct or willful negligence, and
- (c) If the death occurred during a period of unauthorized absence.

(2) A medical evaluation solely to determine if the condition, which caused death, existed prior to service is not required and has no bearing on an LD investigation determination in death cases.

(3) A copy of a civil death certificate, DD Form 1300 (Report of Casualty), or DD Form 2064 (Certificate of Death (Overseas)), is a required exhibit to the informal or formal LD investigation for a death case. Additional exhibits, if applicable, include—

(a) Witness statements, accident reports, police reports, medical statements or documents, drug and alcohol test results, and so forth, that establish the soldier's intentional misconduct or willful neglect or lack thereof.

(b) A properly prepared DA Form 4187 (Personnel Action), or other properly prepared official documentation, substantiating an unauthorized absence.

(c) DA Form 2173.

(d) Other documents establishing the soldier's AD status at the time of death. For Reserve Component soldiers, a copy of the soldier's orders are a required exhibit. However, orders alone are not proof of duty status. In addition to orders, documents such as a DD Form 214 (Certificate Of Release Or Discharge From Active Duty), signed evaluation reports, pay vouchers or Leave and Earnings Statements, official certificates of duty performance signed by commanders or authorized unit personnel, DA Form 1380 (Record of Individual Performance of Reserve Duty Training), or DA Form 1379 (Unit Record of Reserve Training) may be used to show the soldier was on AD at the time of death.

e. The following are the only LD determinations that apply to death cases:

- (1) In line of duty.
- (2) Not line of duty—due to own misconduct.
- (3) Not line of duty—not due to own misconduct.

f. For deaths that are the direct result of combat, HQDA (AHRC-PED-S) will prepare the DD Form 261, recording the soldier's death as in LD. When HQDA (AHRC-PED-S) prepares a DD Form 261 for combat deaths, exhibits are not required. Any death not exempted by a(2) above must be investigated in accordance with this regulation.

g. Qualified survivors of soldiers who die on AD before becoming eligible to receive retirement pay, may, on behalf of the soldier and for the same basis for which a soldier could, appeal an adverse LD determination in a death case under the provisions of paragraph 4-17 of this regulation. The appeal must be submitted within 6 years of the date of the LD determination. (See 10 USC 1448 for an explanation of who is a qualified survivor.)

h. When completing the DD Form 261 for death cases under the provisions of this paragraph, ignore all instructions on the DD Form 261 that indicate not to complete certain items in death cases.

4-14. Vehicle accidents

If the subject matter of the investigation involves any motor vehicle accident, the following facts are important and should be addressed, if applicable:

a. Speed of vehicle involved, as evidenced by testimony of witnesses, skid marks, condition of roads, and the damage to the vehicle.

b. Road factors, including all road characteristics, natural obstructions to the driver's vision, and traffic signs.

c. Other vehicles, including any part played by them in creating the conditions that resulted in the accident.

d. Traffic conditions at the scene of the accident and their effect on the accident.

e. Traffic laws and regulations in force pertinent to the accident, including speed limits and required safety devices.

f. Light and weather conditions and their effect on driving conditions.

g. Mechanical condition of the vehicles involved.

h. Physical condition of the driver or drivers, including sobriety, fatigue, and exhaustion, and the effect of their physical condition on the accident.

- i. Mental condition of the drivers and the effect of the mental condition of the drivers on the accident.
- j. Driving experience of the driver or drivers.
- k. Safety devices installed and whether they were being used at the time of the accident.
- l. The following information should be provided with respect to passengers:
 - (1) Conduct of passengers and its effect on the driver.
 - (2) Prior relationship of passengers and driver that is relevant to knowledge by any passenger of any impairment of the driver (which may have caused the accident) at the time the passenger entered or had a reasonable opportunity to leave the vehicle.
 - (3) Safety devices installed and whether they were being used at the time of the accident.

4-15. Firearm accidents

The IO should document all the relevant circumstances surrounding an incident involving self-inflicted gunshot wounds.

a. Since many firearm accidents occur with no witnesses other than the victim, it is imperative that advice concerning the soldier's rights in accordance with paragraph 3-3b be given and documented before a soldier injured as a result of self-inflicted gunshot wounds is interviewed in the course of the investigation.

b. The following information should be included in the report of investigation:

- (1) Date, time, place, and name of witnesses.
- (2) Description of the physical location of the incident and the physical injuries sustained, including entry and exit wounds, if applicable.
- (3) Description of the firearm and its mechanical condition, especially safety mechanisms and whether the safety mechanisms were used by the firearm handler.
- (4) Description of firearm handler's formal training, experience, and familiarity with the firearm's mechanical condition, safety mechanisms, and proper use.
- (5) Full discussion of any psychological problems, discussion of any mental impairment due to drugs or alcohol use, and, if applicable, statement of mental responsibility.

4-16. Statements

Oral or written accounts of matters within the personal knowledge of individuals usually constitute an indispensable part of the evidence considered in an investigation. The soldier's statement, if any, as well as statements by witnesses, will be recorded on DA Form 2823 (Sworn Statement) when possible. Sworn statements carry more weight than unsworn statements and are the preferred form of evidence; however, persons making statements may be sworn at the discretion of the IO. An IO is authorized to administer oaths under UCMJ, Art. 136, in the performance of duty.

4-17. Appeals

The following information addresses policy and procedures concerning appeals to adverse LD determinations.

a. The soldier may appeal, in writing, within 30 days after receipt of the notice of the LD determination required by paragraph 3-12b. For appeals not submitted within the 30-day time limit, the reason for delay must be fully explained and a request for exception to the time limit justified. The appeal must be personally signed by the soldier unless the soldier is physically unable to sign or is mentally incompetent. In such cases, the appeal will include evidence of the condition that prevented the soldier from personally signing. Appeals will be submitted as follows—

(1) If a soldier is assigned within the geographic area of responsibility of the original final approving authority or is a soldier of the ARNG, the appeal will be sent through channels to the final approving authority. The final approving authority may change his or her previous determination of "not in line of duty" to "in line of duty" if there is substantial new evidence to warrant it. If the final approving authority determines that there is no basis for a change in the determination, it will be so stated by endorsement and the appeal will be sent to HQDA (AHRC-PED-S), Alexandria, VA 22332, for final review and determination.

(2) If a soldier is no longer assigned in the geographic area of responsibility of the original final approving authority, the soldier may send the appeal directly to HQDA (AHRC-PED-S), Alexandria, VA 22332.

b. Any change in the determination of the investigation, based on an appeal, requires the same notification as an original investigation.

c. Assistance with appeals may be obtained from the soldier's supporting legal assistance office.

4-18. Revision or correction of line of duty determinations

The commanding general, USA HRC, acting for the SA, may at any time change a determination made under this regulation. The correct conclusion based on the facts must be shown. However, if the change is from "in line of duty" to "not in line of duty," or, if other evidence is considered which supports a "not in line of duty" determination, the soldier must be informed of the proposed change, its basis, and his or her rights under paragraph 3-3b, and be given a chance to respond in writing in accordance with paragraph 3-8f(6). Any statement or evidence that the soldier submits must be considered before taking corrective action. When a determination is changed after final action has been taken

to award statutory benefits (such as entitlement to physical disability pay), it does not necessarily change the determination on the statutory award. Final statutory determinations, which are otherwise regular and approved by competent authority, may not normally be reopened or revoked. Exceptions may be made under one of the following conditions:

a. In cases of fraud, mistake of law, mathematical miscalculations, or substantial new evidence that could not have been discovered at the same time or shortly after the determination.

b. When reopening or revocation is permitted by the law granting the authority for the statutory determination in question.

4-19. Processing cases for physical disability separation

The agencies that process cases for physical disability separation are not bound by prior LD determinations. When the U.S. Army Physical Disability Agency believes that a prior LD determination may be incorrect for any reason, a request for review should be sent to HQDA (AHRC-PED-S), Alexandria, VA 22332, clearly detailing the reason for such action.

4-20. Members of other armed services

When a member of an armed service other than the Army is injured, dies, or incurs a disease under circumstances that would warrant an investigation under this regulation, and it would be appropriate to conduct an investigation (for example, the individual is attached to an Army unit/command or is being treated in an Army MTF), the nearest command of the parent service of the individual shall be notified by the MTF commander or CAC. If requested, an appropriate investigation shall be conducted and the report of investigation forwarded in accordance with the request. No further action need be taken within DA.

Appendix A References

Section I Required Publications

AR 145-1

Senior Reserve Officers' Training Corps Program: Organization, Administration and Training (Cited in table 3-1.)

AR 340-21

The Army Privacy Program (Cited in paragraph 4-10*a*.)

AR 385-40

Accident Reporting and Records (Cited in paragraph 4-2.)

AR 600-8-1

Army Casualty Operations/Assistance/Insurance (Cited in paragraphs 1-8, 1-9.)

AR 600-8-104

Military Personnel Information Management/Records (Cited in paragraph 3-12*b*(2).)

AR 630-10

Absence Without Leave, Desertion, and Administration of Personnel Involved in Civilian Court Proceedings (Cited in paragraph 4-7*e*.)

10 USC 1448

Application of Plan <http://www.army.mil/references> (Cited in paragraph 4-13*g*.)

Section II Related Publications

A related publication is a source of additional information. The user does not have to read it to understand this publication.

AR 11-2

Management Control

AR 15-6

Procedures for Investigating Officers and Boards of Officers

AR 15-185

Army Board for Correction of Military Records

AR 25-55

The Department of the Army Freedom of Information Act Program

AR 27-3

The Army Legal Assistance Program

AR 27-20

Claims

AR 40-3

Medical, Dental, and Veterinary Care

AR 40-66

Medical Record Administration and Health Care Documentation

AR 40-400

Patient Administration

AR 40–501

Standards of Medical Fitness

AR 135–2

Army National Guard (ARNG) and US Army Reserve (USAR) (Full-Time Support (FTS) Program)

AR 135–18

Active Guard Reserve (AGR) Program

AR 135–200

Active Duty for Missions, Projects, and Training for Reserve Component Soldiers

AR 135–210

Order to Active Duty as Individuals for Other than a Presidential Selected Reserve Call-up, Partial or Full Mobilization

AR 135–381

Incapacitation of Reserve Component Soldiers

AR 140–1

Mission, Organization, and Training

AR 190–5

Motor Vehicle Traffic Supervision

AR 190–45

Law Enforcement Reporting

AR 600–60

Physical Performance Evaluation System

AR 600–110

Identification, Surveillance, and Administration of Personnel Infected with Human Immunodeficiency Virus (HIV)

AR 635–40

Physical Evaluation for Retention, Retirement, or Separation

DOD 5500.7–R

Joint Ethics Regulation (JER) <http://www.dtic.mil/whs/directives>

DOD 7000.14–R

Department of Defense Financial Management Regulations (FMRS) <http://www.dtic.mil/whs/directives>

DODD 1241.1

Reserve Components Incapacitation Benefits <http://www.dtic.mil/whs/directives>

DODD 6490.1

Mental Health Evaluations of Members of the Armed Forces <http://www.dtic.mil/whs/directives>

DODI 1332.38

Physical Disability Evaluation <http://www.dtic.mil/whs/directives>

DODI 6490.4

Requirements for Mental Health Evaluations of Members of the Armed Forces <http://www.dtic.mil/whs/directives>

UCMJ, Art. 136

Authority to administer oaths and to act as notary <http://www.army.mil/references>

5 USC 8140

Members of the Reserve Officers' Training Corps <http://www.army.mil/references>

10 USC 101(d)(1)

Definitions <http://www.army.mil/references>

10 USC 115

Funeral honors duty performed as a Federal function <http://www.army.mil/references>

10 USC 972

Members: effect of time lost <http://www.army.mil/references>

10 USC 1074

Medical and dental care for members and certain former members <http://www.army.mil/references>

10 USC 1074a

Medical and dental care: members on duty other than active duty for a period of more than 30 days <http://www.army.mil/references>

10 USC 1201, 1203, 1204, 1206, and 1207

Regulars and members on active duty for more than 30 days: retirement <http://www.army.mil/references>

10 USC 1219

Statement of origin of disease or injury: limitations <http://www.army.mil/references>

10 USC 2109

Practical military training <http://www.army.mil/references>

10 USC 2110

Logistical Support <http://www.army.mil/references>

10 USC 12503

Ready Reserve: funeral honors duty <http://www.army.mil/references>

10 USC 12602

Members of Army National Guard of United States Air National Guard of United States: credit for service as members of National Guard <http://www.army.mil/references>

28 USC 2671

Definitions <http://www.army.mil/references>

38 USC 101

Definitions <http://www.army.mil/references>

38 USC 105

Line of duty and misconduct <http://www.army.mil/references>

32 USC 503, 504, or 505

Participation in field exercises <http://www.army.mil/references>

Section III

Prescribed Forms

Except where otherwise indicated below, the following forms are available: DA Forms are available on the U.S. Army Publishing Directorate Web site (<http://www.apd.army.mil>); DD Forms are available at <http://www.dior.whs.mil>.

DA Form 2173

Statement of Medical Examination and Duty Status (Prescribed in paragraph 2-4 and 3-2.)

DD Form 261

Report of Investigation - Line of Duty and Misconduct Status (Prescribed in paragraph 2-5.)

Section IV

Referenced Forms

DA Form 1379

Unit Record of Reserve Training (form available through normal supply channels)

DA Form 1380

Record of Individual Performance of Reserve Duty Training

DA Form 2823

Sworn Statement

DA Form 3881

Rights Warning Procedure/Waiver Certificate

DA Form 4187

Personnel Action

DD Form 214

Certificate of Release or Discharge from Active Duty (form available through normal supply channels)

DD Form 1300

Report of Casualty

DD Form 2064

Certificate of Death (Overseas) (form available through normal supply channels)

Appendix B**Rules Governing Line of Duty and Misconduct Determinations**

In every formal investigation, the purpose is to find out whether there is evidence of intentional misconduct or willful negligence that is substantial and of a greater weight than the presumption of "in line of duty." To arrive at such decisions, several basic rules apply to various situations. The specific rules of misconduct are listed below.

B-1. Rule 1

Injury, disease, or death **directly caused** by the individual's misconduct or willful negligence is not in line of duty. It is due to misconduct. This is a general rule and must be considered in every case where there might have been misconduct or willful negligence. Generally, two issues must be resolved when a soldier is injured, becomes ill, contracts a disease, or dies—(1) whether the injury, disease, or death was incurred or aggravated in the line of duty; and (2) whether it was due to misconduct.

B-2. Rule 2

Mere violation of military regulation, orders, or instructions, or of civil or criminal laws, if there is no further sign of misconduct, is no more than simple negligence. Simple negligence is not misconduct. Therefore, a violation under this rule alone is not enough to determine that the injury, disease, or death resulted from misconduct. However, the violation is one circumstance to be examined and weighed with the other circumstances.

B-3. Rule 3

Injury, disease, or death that results in incapacitation because of the abuse of alcohol and other drugs is not in line of duty. It is due to misconduct. This rule applies to the effect of the drug on the soldier's conduct, as well as to the physical effect on the soldier's body. Any wrongfully drug-induced actions that cause injury, disease, or death are misconduct. That the soldier may have had a pre-existing physical condition that caused increased susceptibility to the effects of the drug does not excuse the misconduct.

B-4. Rule 4

Injury, disease, or death that results in incapacitation because of the abuse of intoxicating liquor is not in line of duty. It is due to misconduct. The principles in Rule 3 apply here. While merely drinking alcoholic beverages is not misconduct, one who voluntarily becomes intoxicated is held to the same standards of conduct as one who is sober. Intoxication does not excuse misconduct. While normally there are behavior patterns common to persons who are intoxicated, some, if not all, of these characteristics may be caused by other conditions. For example, an apparent drunken stupor might have been caused by a blow to the head. Consequently, when the fact of intoxication is not clearly fixed, care should be taken to determine the actual cause of any irrational behavior.

B-5. Rule 5

Injury or death incurred while knowingly resisting a lawful arrest, or while attempting to escape from a guard or other lawful custody, is incurred not in line of duty. It is due to misconduct. One who resists arrest, or who attempts to escape from custody, can reasonably expect that necessary force, even that which may be excessive under the circumstances, will be used to restrain him or her and, is acting with willful negligence.

B-6. Rule 6

Injury or death incurred while tampering with, attempting to ignite, or otherwise handling an explosive, firearm, or highly flammable liquid in disregard of its dangerous qualities is incurred not in line of duty. It is due to misconduct. Unexploded ammunition, highly flammable liquids, and firearms are inherently dangerous. Their handling and use require a high degree of care. A soldier who knows the nature of such an object or substance and who voluntarily or willfully handles or tampers with these materials without authority or in disregard of their dangerous qualities, is willfully negligent. This rule does not apply when a soldier is required by assigned duties or authorized by appropriate authority to handle the explosive, firearm, or liquid, and reasonable precautions have been taken. The fact that the soldier has been trained or worked with the use or employment of such objects or substances will have an important bearing on whether reasonable precautions were observed.

B-7. Rule 7

Injury or death caused by wrongful aggression or voluntarily taking part in a fight or similar conflict in which one is equally at fault in starting or continuing the conflict, when one could have withdrawn or fled, is not in line of duty. It is due to misconduct. An injury received or death suffered by a soldier in an affray in which he or she is the aggressor is caused by his or her own misconduct. This rule does not apply when a soldier is the victim of an unprovoked assault and sustains injuries or dies while acting in self-defense. The soldier's provocative actions or language, for which a reasonable person would expect retaliation, is a willful disregard for personal safety, and injuries or death directly resulting from them are due to misconduct. When an adversary uses excessive force or means that could not have been reasonably foreseen in the incident, the resulting injury or death is not considered to have been caused by misconduct. Except for self-defense, a soldier who persists in a fight or similar conflict after an adversary produces a dangerous weapon is acting in willful disregard for safety and is therefore willfully negligent.

B-8. Rule 8

Injury or death caused by a soldier driving a vehicle when in an unfit condition of which the soldier was, or should have been aware, is not in line of duty. It is due to misconduct. A soldier involved in an automobile accident caused by falling asleep while driving is not guilty of willful negligence solely because of falling asleep. The test is whether a reasonable person, under the same circumstances, would have undertaken the trip without expecting to fall asleep while driving. Unfitness to drive may have been caused by voluntary intoxication or use of drugs.

B-9. Rule 9

Injury or death because of erratic or reckless conduct, without regard for personal safety or the safety of others, is not in the line of duty. It is due to misconduct. This rule has its chief application in the operation of a vehicle but may be applied with any deliberate conduct that risks the safety of self or others. "Thrill" or "dare-devil" type activities are also examples of when this rule may be applied.

B-10. Rule 10

A wound or other injury deliberately self-inflicted by a soldier who is mentally sound is not in line of duty. It is due to misconduct. Suicide is the deliberate and intentional destruction of one's own life. The law presumes that a mentally sound person will not commit suicide (or make a bona fide attempt to commit suicide). This presumption prevails until overcome by substantial evidence and a greater weight of the evidence than supports any different conclusion. Evidence that merely establishes the possibility of suicide, or merely raises a suspicion that death is due to suicide, is not enough to overcome the in line of duty presumption. However, in some cases, a determination that death was caused by a deliberately self-inflicted wound or injury may be based on circumstances surrounding the finding of a body. These circumstances should be clear and unmistakable, and there should be no evidence to the contrary.

B-11. Rule 11

Misconduct or willful negligence of another person is attributed to the soldier if the soldier has control over and is responsible for the other person's conduct, or if the misconduct or neglect shows enough planned action to establish a joint venture. The mere presence of the soldier is not a basis for charging the soldier with the misconduct or willful

negligence of another, even though the soldier may have had some influence over the circumstances or encouraged it. If the soldier, however, has substantially participated with others in the venture, then that is misconduct.

B-12. Rule 12

The line of duty and misconduct status of a soldier injured or incurring disease or death while taking part in outside activities, such as business ventures, hobbies, contests, or professional or amateur athletic activities, is determined under the same rules as other situations. To determine whether an injury or death is due to willful negligence, the nature of the outside activity should be considered, along with the training and experience of the soldier.

Glossary

Section I Abbreviations

AD

active duty

ADT

active duty for training

AG

Adjutant General

AGR

Active Guard Reserve

AR

Army Regulation

ARNG

Army National Guard

ARNGUS

Army National Guard of the United States

AT

annual training

AWOL

absent without leave

CAC

casualty area command

CID

Criminal Investigation Division

CNGB

Chief, National Guard Bureau

CONUS

continental United States

DA

Department of the Army

DOD

Department of Defense

DODFMR

Department of Defense Financial Management Regulation

DVA

Department of Veterans Affairs

EPTS

existed prior to service

FTNGD

full-time National Guard duty

FTTD

full-time training duty

GCMCA

General Court-Martial Convening Authority

HQDA

Headquarters, Department of the Army

IADT

initial active duty training

IDT

inactive duty training

IO

investigating officer

JA

Judge Advocate

LD

line of duty

MILPO

military personnel office

MPRJ

military personnel records jacket

MTF

medical treatment facility

MUTA-5

multiple unit training assembly-five

NGB

National Guard Bureau

OMPF

official military personnel file

ROTC

Reserve Officers' Training Corps

SA

Secretary of the Army

SMP

Simultaneous Membership Program

SPCMCA

Special Court-Martial Convening Authority

SROTC

Senior Reserve Officers' Training Corps

UCMJ

Uniform Code of Military Justice

USA HRC

U.S. Army Human Resources Command

USAR

U.S. Army Reserve

USC

United States Code

USPFO

U.S. States Property and Fiscal Officer

Section II

Terms

Existed prior to service

Any injury, disease, or illness, to include the underlying causative condition, which was sustained or contracted prior to the present period of AD or authorized training, or had its inception between prior and present periods of AD or training is considered to have existed prior to service. A medical condition may in fact be present or developing for sometime prior to the point when it is either diagnosed or manifests symptoms. Consequently, the time at which a medical condition "exists" or is "incurred" is not dependent on the date of diagnosis or when the condition becomes symptomatic. (Examples of some conditions which may be pre-existing are slow-growing cancers, heart disease, diabetes, or mental conditions, which can all be present well before they manifest themselves by becoming symptomatic.)

Intentional misconduct

Any wrongful or improper conduct which is intended or deliberate is intentional misconduct. Intent may be expressed by direct evidence of a member's statements or may be implied by direct or indirect evidence of the member's conduct. Misconduct does not necessarily involve committing an offense under the UCMJ or local law

Preponderance of evidence

Evidence that tends to prove one side of a disputed fact by outweighing the evidence to the contrary (that is, more than 50 percent). Preponderance does not necessarily mean a greater number of witnesses or a greater mass of evidence; rather preponderance means a superiority of evidence on one side or the other of a disputed fact. It is a term that refers to the quality, rather than the quantity, of the evidence.

Presumption

An inference of the truth of a proposition or fact, reached through a process of reasoning and based on the existence of other facts. Matters that are presumed need no proof to support them, but may be rebutted by evidence to the contrary.

Proximate cause

A proximate cause is a cause which, in a natural and continuous sequence, unbroken by a new cause, produces an injury, illness, disease, or death and without which the injury, illness, disease, or death would not have occurred. A proximate cause is a primary moving or predominating cause and is the connecting relationship between the intentional misconduct or willful negligence of the member and the injury, illness, disease, or death that results as a natural, direct and immediate consequence that supports a "not line of duty—due to own misconduct" determination.

Service aggravation

Refers to a medical condition that existed prior to service and which worsened or was aggravated as a result of military service more than it would have been worsened or aggravated in the absence of military service.

Simple negligence

The failure to exercise that degree of care which a similarly situated person of ordinary prudence usually takes in the same or similar circumstances, taking into consideration the age, maturity of judgment, experience, education, and training of the soldier. An injury, disease, illness, or death caused solely by simple negligence is in line of duty unless it existed prior to entry into the Service or occurred during a period of AWOL (except when the soldier was mentally unsound at the inception of the unauthorized absence).

Willful negligence

A conscious and intentional omission of the proper degree of care that a reasonably careful person would exercise under the same or similar circumstances is willful negligence. Willful negligence is a degree of carelessness greater

than simple negligence. Willfulness may be expressed by direct evidence of a member's conduct and will be presumed when the member's conduct demonstrates a gross, reckless, wanton, or deliberate disregard for the foreseeable consequences of an act or failure to act. Willful negligence does not necessarily involve committing an offense under the UCMJ or local law.

Section III

Special Abbreviations and Terms

This section contains no entries.