

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990
6599 SENATE STATE AFFAIRS

8672

1003

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 2-9-89
IN ACCORDANCE WITH UNIFORM RULE 23
1/9/89

FURTHER

FIN

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

DATE TURNED INTO OFFICE 2-22-89

Mr. President:

SA Committee considered SB 7
free tuition for a spouse or dependent of certain Alaska militia members

and recommended:

- replace with CS SB 7 (St Aff) same title
[] attached amendment(s) and new title
- [] _____ letter of intent adopted
- [] do pass
- [] do not pass
- [] no recommendation
- individual recommendations
- [] further referral to _____

FISCAL NOTE(S) attached [] zero
[] appropriation no FN attached

[] fiscal impact
[] Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

Tim Kelly

OTHER RECOMMENDATIONS

no rec
~~_____~~
Rich (No Rec)

Chairman signature and recommendation

[] Committee backup attached

1 IN THE SENATE

BY KELLY AND COGHILL

2

SENATE BILL NO. 7

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to free tuition for a spouse or dependent of certain Alaska militia members."

7

8

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9

* Section 1. AS 14.43 is amended by adding a new section to article 3

10 to read:

11

Sec. 14.43.085. FREE TUITION AND FEES FOR A SPOUSE OR DEPENDENT

12

OF ALASKA MILITIA MEMBERS. A person enrolled as a student in good

13

standing at a state-supported postsecondary educational institution is

14

entitled to attend without payment of tuition and fees, if the person

15

was the spouse or dependent child of a member of the Alaska National

16

Guard or Alaska Naval Militia who died while on active service under

circumstances under which Governor may order organized militia into service

(AS 26.05.070.) In this section, "dependent child" means a natural or

adopted child who is less than 23 years of age, and who was a depen-

dent of a member of the Alaska National Guard or Alaska Naval Militia

20

at the time of the member's death.

*Nat'l Guard
or Naval Militia*

Alaska State Legislature

Sen. Pat Pourchot, Chairman

Sen. Jan Faiks, Vice Chairman
Sen. Al Adams
Sen. Tim Kelly
Sen. Rick Uehling



P.O. Box V
State Capitol
Juneau, Alaska 99811

907-465-3712

Senate State Affairs Committee

MEMORANDUM

TO: Senate State Affairs Committee Members
FROM: Senator Pat Pourchot, Chairman
RE: February 15 Committee Hearing
DATE: February 14, 1989

On Wednesday, February 15 at 1:30 p.m. in the Beltz Room the Senate State Affairs Committee will hear the following bills. Senator Ted Stevens will be addressing a joint session of the House and Senate at 2:00 p.m. It is my intent to recess at 2:00 and reconvene after Senator Stevens' address.

SB 7, An Act relating to free tuition for a spouse or dependent of certain Alaska militia members.

SB 7 would allow free attendance at state-supported postsecondary educational institutions by spouses and dependent children of members of the Alaska National Guard or Alaska Naval Militia who are killed in the line of duty. A similar benefit exists under current law for dependents of persons listed as prisoners of war or missing in action during the hostilities in Southeast Asia.

Currently, annual undergraduate tuition and fees at the university run about \$1500 per person.

SB 56, An Act relating to state employment preference for service in the national guard.

SB 56 would broaden the statutory definition of "veteran", for purposes of granting state employment preferences, to include persons who have served at least five years in the national guard or national guard reserve. The current definition includes only those persons with 181 days or more active service in the armed forces from 1917-1919, 1940-1947, 1950-1976, or any other period during which the person was awarded a campaign badge or purple heart.

The employment preference consists of the addition of five points to a veteran's employment examination score. Veterans are also given preference in layoff situations.



Alaska State Legislature

SENATE

Office of the President

P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3755

February 7, 1989

Senator Pat Pourchot, Chairman
State Affairs Committee
Alaska State Senate
Box V
Juneau, Ak 99811

Re: SB 7, education benefits to spouse/dependent of certain
Alaska militia members.

Dear Senator Pourchot,

I would appreciate a committee hearing of SB 7 at your earliest convenience. This proposal has precedent in other states (see attachment).

The legislation offers education benefits to the spouse and dependents of any guardsman who is killed while acting in the line of duty. It is a way that the state can help the family of an Alaska militiamen whose service is given at the ultimate cost.

This proposal is not likely to be expensive, if enacted. Its value is in the comfort and assurance that it offers.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim".

TIM KELLY
Alaska State Senator

①

ALASKA NATIONAL GUARD
OFFICER'S ASSOCIATION
200 W. 34th Street, Suite 727
Anchorage, Alaska 99503

28 November 1988

2. DECEASED-MEMBER DEPENDENT EDUCATIONAL BENEFITS FOR ALASKA NATIONAL GUARD MEMBERS

A. PROPOSAL: This proposal would enact legislation to provide free tuition and fees at State institutions of higher learning, up to a baccalaureate degree, for the dependents of Alaska National Guard members who die in the line of duty.

B. DISCUSSION: Members of the Alaska National Guard, who die in the line of duty, have made the highest sacrifice. This initiative would show the State's appreciation for that sacrifice.

Currently, there is no free tuition and fees for the survivors of Alaska National Guard members killed in the line of duty. There are several deaths per year among the approximately 4000 Alaska National Guard Personnel. Few deaths have historically occurred in the line of duty.

Members of the Alaska National Guard (approximately 4000) and their spouses (approximately 3000) support this initiative. Also, the Alaska Public Safety Commissioned Officers support this initiative and would like it extended to them.

C. COST: The cost is unknown. Tuition and fees, at an Alaska State institution of higher learning, total \$1467/year. Total cost could be \$5868/dependent, based on an average of four years spent on a bachelor's degree.

D. PRECEDENTS:

ALABAMA: Offers educational benefits for survivors of members killed or disabled in the line of duty.

ALASKA: Offers up to \$7500 plus Workmen's Comp; \$750 burial allowance.

COLORADO: Offers free State Tuition for dependents if member killed or disabled on active duty.

MARYLAND: Offers higher education assistance for dependents of members killed or disabled on active duty.

NEBRASKA: Offers spouse and children 100% tuition in State schools if enlisted member dies on active duty.

SOUTH DAKOTA: Offers free tuition at State college for widows or children (under 25) of any Guard member who dies or is totally disabled while on active duty.

TEXAS: Offers free tuition at State schools for orphans of Guardsmen killed in line of duty.

WYOMING: Offers free tuition in State for dependents of Guardsmen killed or permanently disabled while on active duty.

Alaska as long as the student maintains a grade average equivalent to a "C" or better. However, no Native is entitled to the scholarship for more than four years, or for more than the number of years necessary to receive a bachelor's degree. (§ 4 ch 140 SLA 1955)

Revisor's notes. — Formerly AS
14.40.530. Renumbered in 1982.

Sec. 14.43.065. Scholarships in addition to other scholarships. The scholarships are supplemental and in addition to any other scholarship to which an applicant is entitled or may receive. (§ 5 ch 140 SLA 1955)

Revisor's notes. — Formerly AS
14.40.540. Renumbered in 1982.

Sec. 14.43.075. Definition of Native. In AS 14.43.050 — 14.43.075, "Native" means a person between the ages of 17 and 25 who is a descendant of a member of the aboriginal races inhabiting the state when annexed to the United States, or who is a descendant of an Indian or Eskimo who, since the year 1867 and prior to June 30, 1952, migrated into the state from Canada, and who is a descendant having at least one-quarter blood derived from these ancestors. (§ 2 ch 140 SLA 1955)

Revisor's notes. — Formerly AS
14.40.550. Renumbered in 1982.

Article 3. Free Tuition and Fees for Dependents.

Section

80. Free tuition and fees at state-supported educational institutions

Collateral references. — 15A Am. 14 C.J.S. Colleges and Universities, Jur. 2d Colleges and Universities, §§ 19, §§ 27, 28, 20.

Sec. 14.43.080. Free tuition and fees at state-supported educational institutions. (a) Any dependent of a bona fide Alaska resident who, while serving during the hostilities involving the United States forces in Southeast Asia, was listed by the United States Department of Defense as a prisoner of war or missing in action in Southeast Asia may attend any state-supported educational institution without payment of tuition and fees.

(b) In this section, "dependent" means a dependent spouse or child. (§ 1 ch 176 SLA 1972)

Mike Ford

BY KELLY AND COGILL

1 IN THE SENATE

2

SENATE BILL NO. 7

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

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A BILL

6 For an Act entitled: "An Act relating to free tuition for a spouse or

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* Section 1. AS 14.43 is amended by adding a new section to article 3

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Guard or Alaska Naval Militia who died while ^{in the line of duty} on active service under

17

AS 26.05.070] In this section, "dependent child" means a natural or

18

adopted child who is less than 23 years of age, and who was a depen-

19

dent of a member of the Alaska National Guard or Alaska Naval Militia

20

at the time of the member's death.

In this section, "line of duty" is defined as in regs. promulgated by Dept of Navy, Dept of Army, or Dept of Air Force as case may be. or directives

"as provided under Fed. Law" or use citation

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

POSITION PAPER
SB7

Summary of Bill: This bill would provide for a waiver of tuition and fees at state-supported postsecondary educational institutions (i.e., the various campuses of the University of Alaska) for dependents of Alaska National Guard members killed in the performance of their duties. The bill defines the performance of duties to be those duties performed under AS 26.05.070, or "State Active Duty." Duties performed under State Active Duty would include call-outs by the Governor to respond to disasters or civil unrest, but does not include weekend training or any duty under federal orders.

Impact of Bill on Department of Military and Veterans Affairs: In the event that members of the Alaska National Guard died while in the performance of their duties as defined in the bill, the military personnel office in the Office of the Adjutant General would notify any eligible dependents of their benefits, and upon request provide written certification of their eligibility to any state-supported postsecondary educational institutions. No fiscal impact is expected in DMVA as a result of enactment of this legislation.

Departmental Position on Bill: The Department strongly supports the bill's intent. The financial hardship faced by the loss of a family member serving in the Alaska National Guard can be devastating enough to prevent attendance at college by dependents who would otherwise have been able to afford college. Providing this benefit will serve as an additional incentive for recruiting and retaining members in the Alaska National Guard.

A recommended change to the bill would be to change the definition of active service to include any service performed "in the line of duty." This change would provide the same benefits to dependents of members of the National Guard killed in the line of duty, regardless of what the nature of that duty was. The bill as it currently reads limits the benefit to dependents of members of the national guard killed while on state active duty as called out by the Governor. The language needed to implement this change is as follows:

On lines 16-17, delete the words "on active service under AS 26.05.070" and insert the words "in the line of duty"

On line 20, following "death.", insert: "In this section, "in the line of duty" is defined the same as in those regulations promulgated by the Department of the Army, the Department of the Navy, or the Department of the Air Force, as the case may be."

Approved: _____

J. Morrison
for

MG John W. Schaeffer

Date: _____

2/15/89

FISCAL NOTE

REQUEST:

Revision Date: February 14, 1989
 Title: Relating to no tuition for certain survivors in National Guard
 Sponsor: Kelly
 Requestor: Senate State Affairs

Agency Affected: Military & Veterans Affairs
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jeff Morrison, Director
 Division: Administrative & Support Services, DMVA
 Approved by Commissioner: MG John Schaeffer
 Agency: Department of Military & Veterans Affairs

Phone: 465-4600
 Date: February 14, 1989
 Date: February 14, 1989

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

**STATE OF ALASKA
1989 LEGISLATIVE SESSION**

BILL VERSION: SB7

PUBLISH DATE: 1/9/89

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: University of Alaska
 Title: "An Act relating to free tuition for a spouse or dependent of certain Alaska militia members"
 BRU: UAA, UAF, UAS
 Sponsor: Kelly & Coghill Components: _____
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

It is the university's understanding that no individuals currently meet the qualifications of this bill. In the event that funds are needed to fund this program, there are three options: (1) fund in the Department of Military & Veterans Affairs, (2) allow 100% forgiveness on loans to qualified dependents;

Prepared by: Marsha Hubbard Phone: 474-7593
 Division: Statewide Budget Office Date: 2/14/89

Approved by Commissioner: Brian Rogers Date: 2/14/89
 Agency: University of Alaska

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)

University of Alaska

Page 2 of 2

FISCAL NOTE continuation

Analysis:

(3) university would request reimbursement from the state in the same manner that programs such as EPORS are funded; (4) the average cost of annual in-state tuition for FY89 for UAA - \$970, UAF - \$1332, UAS - \$932.

FISCAL NOTE

REQUEST:

Revision Date: 2/22/89
 Title: "An Act Relating to Free Tuition
 for a Spouse or Dependent of Certain
 Alaska Militia Members."

Agency Affected: University of Alaska
 BRU: UAA, UAF, UAS

Sponsors: Kelly and Coughlin

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No individuals currently meet the qualifications of this bill. As individuals become eligible, the university will request reimbursement from the state on a per person basis as follows:

UAA -\$970 UAF - \$1,332 UAS -\$932

Prepared by: Marsha Hubbard
 Division: Statewide Budget Office

Phone: 474-7593
 Date: 2/22/89

Approved by: Vice President, Brian Rogers
 Agency: University of Alaska

Date: 2/22/89

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: February 22, 1989
 Title: Relating to no tuition for certain survivors in National Guard
 Sponsor: Senate State Affairs
 Requestor: Senate State Affairs

Agency Affected: Military & Veterans Affairs
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jeff Morrison, Director
 Division: Administrative & Support Services, DMVA
 Approved by Commissioner: 1MG John Schaeffer
 Agency: Department of Military & Veterans Affairs

Phone: 465-4600
 Date: February 23, 1989
 Date: February 23, 1989

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

6-0303E
Ford
2/22/89

Original sponsors: Kelly and Coghill

1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 7 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to free tuition for a spouse or
7 dependent of certain Alaska militia members."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 14.43 is amended by adding a new section to article 3
10 to read:

11 Sec. 14.43.085. FREE TUITION AND FEES FOR A SPOUSE OR DEPENDENT
12 OF ALASKA MILITIA MEMBERS. A person enrolled as a student in good
13 standing at a state-supported postsecondary educational institution is
14 entitled to attend without payment of tuition and fees, if the person
15 was the spouse or dependent child of a member of the Alaska National
16 Guard or Alaska Naval Militia who died while in the line of duty for
17 the state or federal government. In this section

18 (1) "line of duty" has the meaning given under federal law;

19 (2) "dependent child" means a natural or adopted child who
20 is less than 23 years of age, and who was a dependent of a member of
21 the Alaska National Guard or Alaska Naval Militia at the time of the
22 member's death.
23

SB 7 FREE TUITION FOR SPOUSE OR DEPENDENT OF CERTAIN ALASKA
MILITIA MEMBERS

SPONSOR SEN. KELLY (DAVE GRAY)

D.M.V.A. JEFF MORRISON

HEARD LAST WEEK. C.S. HAS BEEN PREPARED:

ORIGINAL BILL SAID "IF KILLED WHILE ON ACTIVE SERVICE UNDER STATE STATUTE". THIS EXCLUDED FEDERAL CALLS TO ACTION AND THE "WEEKEND WARRIOR" STUFF WHICH IS CONSIDERED BY THE MILITARY AS "INACTIVE DUTY TRAINING".

C.S. SUBSTITUTES "IN LINE OF DUTY AS DEFINED UNDER FEDERAL LAW". WE HAD PLANNED TO RESTATE THE FEDERAL DEFINITION (TOO LONG AND INVOLVED) OR REFERENCE THE FEDERAL REGS. ISSUED SEPARATELY BY ARMY, NAVY, AND AIR FORCE (DEPT. BECAME CONCERNED THAT EACH TIME REGS. CHANGED STATUTORY REFERENCE WOULD NEED TO BE CHANGED ALSO.)

BE AWARE THAT "IN LINE OF DUTY" IS BROADER THAN LANGUAGE IN ORIGINAL BILL. DEPT. THINKS IT IS ONLY FAIR. IN REALITY, IT WILL PROBABLY NEVER MATTER BECAUSE THE PROVISION WILL PROBABLY NEVER BE USED. REMEMBER THE LAST TIME A NATIONAL GUARDSMAN DIED IN THE LINE OF DUTY WAS IN THE ANCHORAGE EARTHQUAKE.

COPY OF FEDERAL ARMY REGS. ATTACHED. OTHERS HAVE BEEN REQUESTED.

UNIVERSITY IS PREPARING REVISED FISCAL NOTE WHICH MORE CLEARLY STATES WHAT THE COST TO THE UNIVERSITY WOULD BE ON A PER STUDENT BASIS IF SOMEONE WERE TO TAKE ADVANTAGE OF SB 7.

SB 7 FREE TUITION FOR SPOUSE OR DEPENDENT OF CERTAIN ALASKA MILITIA MEMBERS

TO TESTIFY:

SENATOR KELLY, SPONSOR (DAVE GRAY)

JEFF MORRISON, DEPT. MILITARY & VETERANS' AFFAIRS

SUZANNE TRYCK, UNIVERSITY

OTHERS (SEE WITNESS LIST)

F.Y.I.

PER STATE STATUTE (AS 26.05.010 AND AS 26.05.030):
UNORGANIZED MILITIA (ALL ABLE-BODIED
PERSONS OVER AGE 17)

ORGANIZED MILITIA

AK NATIONAL GUARD
(AS PER U.S. LAWS)

AK NAVAL MILITIA
(U.S. NAVAL RESERVE,
U.S. MARINE CORPS
RESERVE)

AK STATE MILITIA
(FORMER MEMBERS OF
REGULAR ARMY,
NAVY, MARINE CORPS
TRAIN 2 DAYS/MONTH
FILL IN FOR GUARD
IF GUARD MOBILIZED)

FREE TUITION CURRENTLY AVAILABLE TO DEPENDENTS OF P.O.W./M.I.A. IN SOUTHEAST ASIA. NOONE IS TAKING ADVANTAGE OF THIS BENEFIT, AND NOONE IS CURRENTLY ELIGIBLE FOR SB 7.

ACCORDING TO SUZI, THE UNIVERSITY IS RELUCTANT TO PROVIDE FREE TUITION. IF SOMEBODY WERE TO APPLY UNDER SB 7, THE UNIV. WOULD HOPE TO GET FUNDS FROM DEPT. OF MILITARY AFFAIRS TO COVER THE TUITION. THE UNIVERSITY'S FISCAL NOTE WILL BE ZERO. D.M.V.A. THINKS THE UNIV. SHOULD JUST "EAT" THE TUITION.

ALASKA NATIONAL GUARD AND ALASKA NAVAL MILITIA MEMBERS, ACTIVE OR RETIRED, CURRENTLY ARE ELIGIBLE FOR 50% OFF TUITION/FEES AT ALASKA EDUCATIONAL, VOCATIONAL, AND TECHNICAL FACILITIES (AS 26.05.295-.296). THE MEMBER PAYS FULL TUITION, AND IS REIMBURSED BY D.M.V.A. -- THEY HAVE A \$30,000 BUDGET COMPONENT FOR THIS.

UNIVERSITY EMPLOYEES DO GET FREE TUITION AS PART OF THEIR EMPLOYEE BENEFIT PACKAGE.

Veterans' Benefits

- State
- Federal

Rec'd. from DMVA 2-15-89

Division of Veterans Affairs
Department of Military and Veterans Affairs

State

What was in past years known as the Territorial Veterans Commission, the Alaska World War II Veterans Board and the Veterans Affairs Office, Department of Commerce and Economic Development became the Division of Veterans Affairs in March, 1984. A direct result of concerns expressed by Alaskan Veterans prompted Executive Order #58 to be issued by Governor Bill Sheffield in early 1984, which created the Division of Veterans Affairs under the Adjutant General, who is also the Commissioner, Department of Military and Veterans Affairs. The Division of Veterans Affairs was staffed and became operational in July, 1984. This reorganization significantly elevated the status and visibility of Alaska's Veterans within state government and at the Commissioner's level. The Veterans Division provides a central point of contact within the State to coordinate veterans' issues and programs, acts as a liaison with federal and state agencies, veterans' organizations and the executive branch of state government. The goal of the Division is to improve the efficiency and effectiveness of state programs available to Alaska's veterans.

Veterans Death Gratuity (AS 26.10.080)

The State of Alaska will provide a burial allowance of up to \$750.00 for burial in Alaska of a veteran who was a resident at the time of death. The veteran must have been discharged under honorable conditions and must have been a resident of Alaska for one year at the time of death. Also eligible are persons who have service in the Alaska Army National Guard, Alaska Air National Guard, or the Alaska Naval Militia, or who have served in a reserve unit of the United States Armed Forces in Alaska if the reserve unit required, as a minimum, one weekend each month of duty and 15 consecutive days of active duty training each year for not less than three years and whose discharge was under honorable conditions. The burial allowance will be paid upon application to the surviving spouse. If the veteran has no surviving spouse, the gratuity shall be paid to the personal representative of the veteran. Forms are available from funeral directors, service officers of veterans' organizations and the Division of Veterans Affairs.

Report of Separation (AS 26.10.070)

Veterans may record without fee their Armed Forces report of separation at a recorder's office of the Department of Natural Resources. Each recorder's office shall periodically submit to the Bureau of Vital Statistics copies of the reports of separation which it records.

Public Record Certification (AS 09.25.121)

The official custodian of the public record shall furnish free of charge to a veteran, a person acting on their behalf, or an authorized representative of the Division of Veterans Affairs or the U.S. Veterans Administration, certified copies of any public record required by the Division of Veterans Affairs or by the U.S. Veterans Administration, whenever such a document is to be used in determining the eligibility of the person to participate in benefits.

Education (AS 14.43.080)

Any dependent spouse or child of a bona fide Alaska resident who, while serving during the hostilities involving the United States forces in Southeast Asia, was listed by the United States Department of Defense as a prisoner of war or missing in action in Southeast Asia may attend any state supported educational institution without payment of tuition or fees.

Employment (AS 39.25.150)

In determining the qualification of applicants for entrance into the state's classified personnel service under merit system examination, five additional points shall be added to the passing grade of a veteran and ten additional points shall be added to the passing grade of a disabled veteran, but the additional points may be used only the first time the veteran obtains a position in the state's classified personnel service. Re-employment benefits granted by section 9 of the Universal Military Training and Service Act shall be granted to veterans who have been in the employ of Alaska or any subdivision thereof.

Housing and Residential Loans

Alaska Housing Authority (AS 18.55.330)

Provisions of the Alaska State Housing Authority Act provide that low-cost housing and housing projects be made available to veterans of World War II and of the Korean and Vietnam conflicts and their spouses and widows or widowers. Preference is given to veterans on the rental or purchase of fifty percent of such dwelling units. Such units for rental or sale to veterans must be set aside for this purpose for at least thirty days following first publication of an availability notice before making them available to other residents. If, after an additional thirty days a unit remains unassigned, the Housing Authority may rent or sell it to any person in the state, provided that residents have first preference.

Alaska Housing Finance Corporation (AS 18.56.101)

Currently these three basic options are available to veterans. 1. **An AHFC loan combined with a Federal Veterans Administration Loan.** Eligibility for this benefit is determined by the Federal Veterans Administration. 2. **The Veterans Mortgage Program.** Federal restrictions require that individuals applying under this program be "qualified veterans" as defined under Title 38, US Code 101 (2) and have been on active duty prior to January 1, 1977 and cannot have been out of the service for 30 years or more after January 1, 1985. 3. **State Veterans Interest Rate Preference.** The state veteran receives a one percent lower interest rate on the first \$90,000.00 of the loan. This is not a program but an interest rate differential that must be applied to a program. A qualified individual must have served in the Armed Forces for 90 days or more (unless discharged due to a service-connected injury) and have been discharged other than dishonorably. Active duty for the purpose of training will not be counted toward the 90-day requirement. Members of the Reserve (if the unit is a troop program unit) and Alaska National Guard with a minimum of five years service may also qualify. In addition, a widow or widower may qualify if the veteran was inducted from Alaska. Details on these and other Alaska Housing Finance Corporation programs are available through realtors, banks, lending institutions or directly from the AHFC, 235 East 8th Ave., Box 101020, Anchorage, Alaska 99510.

Land Settlement benefits

Veterans Preference (AS 38.05.087)

Alaska's Veterans who, for the purpose of this statute have 90 days or more active military service with an honorable discharge, have the opportunity to purchase unoccupied residential land before the land is offered for sale to the general public.

Veterans Land Discount (AS 30.05.940)

An eligible veteran is entitled to a discount of twenty-five percent on the purchase of state land to be used for purposes other than commercial or industrial. This can be used only once during the veteran's lifetime and is exclusive of serving, plotting and other reimbursable costs.

Information on veterans land settlement benefits is available from the Dept. of Natural Resources, Division of Land and Water Management, 3601 C Street, P.O. Box 7-005, Anchorage, Alaska 99510.

Loans (AS 26.15.040)

~~Throughout the years, the Alaska Legislature has enacted legislation authorizing loans to veterans for personal, farm and single-family homes, business and multiple dwellings. These statutes do not require the State to make loans, but simply authorize the granting of loans. These programs have been unfunded since 1981. Some are covered by other state loan programs. A "State Loan Pamphlet" distributed by the Department of COMMERCE & ECONOMIC DEVELOPMENT outlines all current state loan programs. Copies are available on request by contacting the Division of Investments, P.O. Box DI, Juneau, Alaska 99811.~~

Tax Exemption

Non-Business Organizations (AS 29.53.020)

Property of a non-business organization composed entirely of persons with 90 days or more of active service in the Armed Forces of the United States, whose conditions of service and separation were other than dishonorable, or the property of the auxiliary of such an organization is exempt from general taxation.

Property Tax Exemption (AS 29.53.020)

A disabled veteran whose service connected disability is rated at 50% or more by the branch of military service in which that person served or by the Veterans Administration is exempt from taxation of the assessed value of their residence.

Property Tax Equivalency Payments (AS 29.73.060 & .062)

A disabled veteran meeting the same criteria as in the above statute who rents a permanent place of abode is eligible for a tax equivalency payment from the state through the Department of Community and Regional Affairs. If the abode is located in a municipality that does not levy and collect a property tax and does collect a sales tax on rents paid for residential property, the veteran is eligible for a reimbursement payment.

To obtain the exemption, equivalency or reimbursement payments, an eligible resident must apply by January 15 of each year. In the case of the exemption, application must be made no later than January 15 of the assessment year for which the exemption is sought. For equivalency or reimbursement payments, application must be made for the preceding year by January 15 of each year. Application forms for each of these programs are available from local tax assessors, at municipal tax offices and the Department of Community and Regional Affairs.

Motor Vehicles (AS 28.10.161(D) - .421)

A disabled veteran receiving seventy percent or more disability compensation may register one passenger vehicle a year without charge. Upon request of the applicant, the Division of Motor Vehicles will issue specially designed registration plates to the disabled veteran.

The Division of Motor Vehicles, upon receipt of written proof, may issue without charge special registration plates for one non-commercial motor vehicle to a veteran who has been a prisoner of war during a declared war or other conflict as determined during the Department of Defense under federal regulations. The design and color of the POW plates shall be solely within the discretion of the commissioner. For both of these programs, qualified veterans must apply for the special license plates and the waiver of fees. This can be done by contacting any Division of Motor Vehicles office.

Hunting and Sport Fishing License (AS 16.05.341)

Resident hunting and sport fishing licenses are available at no charge to honorably discharged veterans with a fifty percent or greater service-connected disability and Alaska residency (Must have lived in Alaska for 12 consecutive months). Veterans must provide certification of disability to any Department of Revenue office to obtain this benefit.



Federal Veterans Benefits Timetable

YOU HAVE (after separation from service)	BENEFITS	WHERE TO APPLY
10 years or until Dec. 31, 1989, whichever comes first.	GI EDUCATION: The VA will pay you while you complete high school, go to college, or learn a trade, either on the job or in an apprenticeship program. Vocational and educational counseling is available.	Any VA Office
10 years	VETERANS EDUCATIONAL ASSISTANCE PROGRAM: The VA will provide financial assistance for the education and training of eligible participants under the voluntary contributory education program. Vocational and educational counseling is available upon request.	Any VA Office
12 years, although extensions are possible under certain conditions	VOCATIONAL REHABILITATIONS: As part of a rehabilitation program, the VA will pay tuition, books, tools or other expenses and provide a monthly living allowance. Employment assistance is also available to help a rehabilitated veteran get a job. A seriously disabled veteran may be provided services and assistance to increase independence in daily living.	Any VA Office
No time limit	GI LOANS: The VA will guarantee your loan for the purchase of a home, manufactured home, or condominium.	Any VA Office
No time limit	DISABILITY COMPENSATION: The VA pays compensation for disabilities incurred or aggravated during military service. Payments are made from date of separation if claim is filed within 1 year for separation	Any VA Office
1 year from date of mailing of notice of initial determination	APPEAL TO BOARD OF VETERANS APPEALS: Appellate review will be initiated by a notice of disagreement and completed by a substantive appeal after a statement of the case has been furnished	VA Office or hospital making the initial determination.
No time limit	MEDICAL CARE: The VA provides hospital care covering the full range of medical services. Outpatient treatment is available for all service-connected conditions, or nonservice-connected conditions in certain cases. Alcohol and drug dependence treatment is available.	Any VA Office

Time varies	BURIAL BENEFITS: The VA provides certain burial benefits, including interment in a national cemetery and partial reimbursement for burial expenses.	VA National Cemetery having grave space, any VA office.
No time limit	READJUSTMENT COUNSELING: General or psychological counseling is provided to assist in readjusting to civilian life.	Any Vet Center, VA office or hospital.
Within 90 days of separation	ONE-TIME DENTAL TREATMENT: The VA provides one-time dental care for certain service-connected dental conditions.	Any VA Office or hospital
No time limit	DENTAL TREATMENT: Treatment for veterans with dental disabilities resulting from combat wounds or service injuries and certain POW's and other service-connected disabled veterans.	Any VA Office or hospital
1 year from date of notice of VA disability rating	GI INSURANCE: Low cost life insurance (up to \$10,000) is available for veterans with service-connected disabilities Veterans who are totally disabled may apply for a waiver of premiums on these policies	Any VA Office
120 days or 1 year with evidence of insurability; or up to 1 year if totally disabled	VETERANS GROUP LIFE INSURANCE: SGLI may be converted to a 5-year nonrenewable term policy. At the end of the 5-year term, VGLI may be converted to an individual policy with a participating insurance company.	Office of Servicemen's Group Life Insurance, 213 Washington St., Newark, NJ 07102 or any VA Office
No time limit	EMPLOYMENT: Assistance is available in finding employment in private industry, in Federal service and in local or state employment service.	Local or state employment service. U.S. Office of Personnel Management. Labor Department. Any VA Office
Limited time	UNEMPLOYMENT COMPENSATION: The amount of benefits and payment period vary among States. Apply after separation	State employment service
90 days	REEMPLOYMENT: Apply to your former employer for employment	Employer
30 days	SELECTIVE SERVICE: Male veterans born in 1960 or later years must register.	At any U.S. Post Office; overseas at any U.S. Embassy or Consulate.

Alaska as long as the student maintains a grade average equivalent to a "C" or better. However, no Native is entitled to the scholarship for more than four years, or for more than the number of years necessary to receive a bachelor's degree (§ 4 ch 140 SLA 1955)

Revisor's notes. — Formerly AS
14.40.530. Renumbered in 1982.

Sec. 14.43.065. Scholarships in addition to other scholarships. The scholarships are supplemental and in addition to any other scholarship to which an applicant is entitled or may receive. (§ 5 ch 140 SLA 1955)

Revisor's notes. — Formerly AS
14.40.540. Renumbered in 1982.

Sec. 14.43.075. Definition of Native. In AS 14.43.050 — 14.43.075, "Native" means a person between the ages of 17 and 25 who is a descendant of a member of the aboriginal races inhabiting the state when annexed to the United States, or who is a descendant of an Indian or Eskimo who, since the year 1867 and prior to June 30, 1952, migrated into the state from Canada, and who is a descendant having at least one-quarter blood derived from these ancestors. (§ 2 ch 140 SLA 1955)

Revisor's notes. — Formerly AS
14.40.550. Renumbered in 1982.

Article 3. Free Tuition and Fees for Dependents.

Section

80. Free tuition and fees at state-supported educational institutions

Collateral references. — 15A Am. 14 C.J.S. Colleges and Universities, Jur. 2d Colleges and Universities, §§ 19, §§ 27, 28.
20.

Sec. 14.43.080. Free tuition and fees at state-supported educational institutions. (a) Any dependent of a bona fide Alaska resident who, while serving during the hostilities involving the United States forces in Southeast Asia, was listed by the United States Department of Defense as a prisoner of war or missing in action in Southeast Asia may attend any state-supported educational institution without payment of tuition and fees.

(b) In this section, "dependent" means a dependent spouse or child.
(§ 1 ch 176 SLA 1972)



Alaska State Legislature

SENATE

Office of the President

P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3755

February 7, 1989

Senator Pat Pourchot, Chairman
State Affairs Committee
Alaska State Senate
Box V
Juneau, Ak 99811

Re: SB 7, education benefits to spouse/dependent of certain
Alaska militia members.

Dear Senator Pourchot,

I would appreciate a committee hearing of SB 7 at your
earliest convenience. This proposal has precedent in other
states (see attachment).

The legislation offers education benefits to the spouse
and dependents of any guardsman who is killed while acting in
the line of duty. It is a way that the state can help the
family of an Alaska militiamen whose service is given at the
ultimate cost.

This proposal is not likely to be expensive, if enacted.
Its value is in the comfort and assurance that it offers.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim", with a horizontal line drawn through it.

TIM KELLY
Alaska State Senator

①

ALASKA NATIONAL GUARD
OFFICER'S ASSOCIATION
200 W. 34th Street, Suite 727
Anchorage, Alaska 99503

28 November 1988

2. DECEASED-MEMBER DEPENDENT EDUCATIONAL BENEFITS FOR ALASKA NATIONAL GUARD MEMBERS

A. PROPOSAL: This proposal would enact legislation to provide free tuition and fees at State institutions of higher learning, up to a baccalaureate degree, for the dependents of Alaska National Guard members who die in the line of duty.

B. DISCUSSION: Members of the Alaska National Guard, who die in the line of duty, have made the highest sacrifice. This initiative would show the State's appreciation for that sacrifice.

Currently, there is no free tuition and fees for the survivors of Alaska National Guard members killed in the line of duty. There are several deaths per year among the approximately 4000 Alaska National Guard Personnel. Few deaths have historically occurred in the line of duty.

Members of the Alaska National Guard (approximately 4000) and their spouses (approximately 3000) support this initiative. Also, the Alaska Public Safety Commissioned Officers support this initiative and would like it extended to them.

C. COST: The cost is unknown. Tuition and fees, at an Alaska State institution of higher learning, total \$1467/year. Total cost could be \$5868/dependent, based on an average of four years spent on a bachelor's degree.

D. PRECEDENTS:

ALABAMA: Offers educational benefits for survivors of members killed or disabled in the line of duty.

ALASKA: Offers up to \$7500 plus Workmen's Comp; \$750 burial allowance.

COLORADO: Offers free State Tuition for dependents if member killed or disabled on active duty.

MARYLAND: Offers higher education assistance for dependents of members killed or disabled on active duty.

NEBRASKA: Offers spouse and children 100% tuition in State schools if enlisted member dies on active duty.

SOUTH DAKOTA: Offers free tuition at State college for widows or children (under 25) of any Guard member who dies or is totally disabled while on active duty.

TEXAS: Offers free tuition at State schools for orphans of Guardsmen killed in line of duty.

WYOMING: Offers free tuition in State for dependents of Guardsmen killed or permanently disabled while on active duty.

Library
Army Regulation 600-8-1

ASSD DIR	ASSD ANCH	SUP ANCH	FM	KOLIS	TAG
SEC	Department of Army and Veterans Affairs				DEP
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	Administrative & Support Services Division (ASSD)				
NOTE:					

Personnel—General

Army Casualty and Memorial Affairs and Line of Duty Investigations

Headquarters
Department of the Army
Washington, DC
18 September 1986

b. If the effects cannot be delivered or are not claimed within a reasonable period of time, the responsible officer will deliver them, with all available information concerning the decedent, to the person designated by the judicial officer of the local civil government who has jurisdiction over the estates of deceased persons.

36-5. Inventories and receipts

a. These papers will be retained at the installation at which death occurred in order that any inquiries received within a reasonable time may be answered by the installation concerned.

b. Copies of inventories or receipts for the personal effects of persons in paragraphs 36-2 through 36-4 will not be forwarded to the HQDA (DAPC-PED-F), ALEX VA 22331-0400.

Part Five Line of Duty Investigation

Chapter 37 General

37-1. Scope

Part five sets forth policies and procedures for investigating the circumstances of the disease, injury, or death of a service member. It provides standards and considerations used in determining line of duty (LD) status.

37-2. Applicability

In addition to personnel identified in the overall applicability statement, part five applies to Army National Guard (ARNG) personnel on full-time National Guard Duty under Title 32 of the United States Code.

37-3. Reasons for conducting line of duty investigations

a. *Extension of enlistment.* An enlisted member who is unable to perform duties for more than 1 day because of his or her intemperate use of drugs or alcohol or because of disease or injury resulting from the member'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 member may be entitled is dependent upon the member's cumulative years of creditable service. An enlisted member who is unable to perform duties for more than 1 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 per DOD Military Pay and Allowances Entitlements Manual (DODPM), paragraph 10104.

c. *Forfeiture of pay.* Any service member on active duty who is absent from regular duties for a continuous period of more than 30 days because of absence that is directly caused by an injury or disease that is not related to pay for the period of that absence. Pay is not forfeited for absence from duty caused by injuries. Pay is not forfeited for diseases not directly caused by and immediately following the intemperate use of drugs and alcohol per paragraph 10315b, DODPM.

d. *Disability retirement and severance pay.* In order for military members who sustain permanent disabilities while on active duty to be eligible to receive certain retirement and severance pay benefits, the requirements of the applicable statutes must be met. One of these requirements is that the disability must not have resulted from the member'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 findings. However, entitlement to disability compensation is dependent upon those facts that have been officially recorded and are on file within the Department of the Army. This includes reports and investigations submitted in accordance with this regulation.

e. *Compensation for disablement during training.* A member of the National Guard is entitled to hospital benefits, pensions, and other compensation, just as a member of the Active Army, when called or ordered to perform certain types of training (32 USC 318)—

(1) For a period of more than 30 days, and is disabled in LD from disease while so employed.

(2) For any period of time, and is disabled in LD from injury while so employed.

f. *Benefits administered by the Veterans' Administration (VA).* In determining whether a veteran or his or her survivors or family members are eligible for certain benefits, the VA makes its own determinations with respect to LD. These determinations rest upon the evidence available. Usually this consists of those facts which have been officially recorded and are on file within the Department of the Army, 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.

Chapter 38 Line of Duty Appointing, Reviewing, and Approving Authority and Command Responsibilities

38-1. Secretary of the Army (SA)

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

38-2. Deputy Chief of Staff for Personnel

The DCSPER will—

a. Publish policies and procedures related to LD determinations.

b. Ensure LD investigations are accurate and timely.

38-3. Commanding General, U.S. Army Military Personnel Center

The CG, MILPERCEN—

a. Has been delegated functional responsibility for LD determinations and acts for the SA on all LD determinations and appeals referred to HQDA and for all exceptions to procedures described in this regulation.

b. Takes final action on all death cases (final action consists of administrative review for correctness only).

c. Approves as final approving authority for special cases.

d. Provides the Commander, Walter Reed Army Institute of Research, ATTN: SGRD-UWI-A (JMR), Washington, DC 20307-5100, with a copy of the psychological autopsy report when received as part of the LD investigation.

38-4. Chief, National Guard Bureau (CNGB)

a. The CNGB is responsible for the LD investigation process within the ARNG.

b. The CNGB acts in the name of the SA as final approving authority for the ARNG except for those members in a federalized status or attending an active Army service school. This authority may be delegated to a civilian employee, whose regular assigned duties are equal to the duties normally assigned to field grade officers or a field grade officer on duty with the 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 to 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.

an investigating officer who completes DD Form 261 (Report of Investigation—Line of Duty and Misconduct Status) and appends appropriate statements and other documentation to support his or her findings, which are submitted to the GCMCA for approval. See chapter 40, section II, for a detailed treatment of the formal LD investigation.

39-5. Standards applicable to LD determinations

a. Decisions on line of duty determinations will be made in accordance with the standards set forth in this regulation. Injury or disease proximately caused by the member'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. Unless refuted by substantial evidence contained in the investigation, an injury, disease, or death is presumed to be in LD.

c. LD findings or 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, i.e., that based on actual knowledge or observation of witnesses;

(2) All indirect evidence, i.e., facts or statements from which reasonable inferences, deductions, and conclusions may be drawn to establish an unobserved fact, knowledge, or state of mind.

d. There is no distinction 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 F will be considered fully in deciding LD determinations. These elaborate upon but do not modify the basis for LD determinations.

Chapter 40 The LD Investigation Process

Section I Informal Investigations

40-1. General

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

40-2. Statement of Medical Examination and Duty Status (DA Form 2173)

a. 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 member's unit commander for completion; 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 (Appendix G) for the member's unit if the member is not Federalized and/or attending an active Army service school.

b. The unit commander will complete section II of DA Form 2173 to show duty status at the time and factual details of the incident.

c. Instructions for completion of DA Form 2173 are in Figure 40-1. Sample of a DA Form 2173 for—

(1) An injury requiring an informal investigation is at figure 40-1.

(2) A death case requiring an informal investigation is at figure 40-2.

(3) An injury requiring a formal investigation is at figure 40-3.

(4) A disease requiring an informal investigation is at figure 40-4.

40-3. Evidence collection

a. The investigation will ascertain dates, places, persons, and events definitely and accurately. It is essential to provide the appointing/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.

b. All findings of fact should be supported by evidential exhibits. Copies of military or civilian police accident reports, pertinent hospitalization or clinical records, autopsy reports, and written statements shall be attached as exhibits (such as exhibits A and B), 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.

c. ~~Warning required before completing statement regarding disease or injury.~~

(1) A member of the Armed Forces may not be required to sign a statement relating

to the origin, incurrence, or aggravation of his or injury. Any involuntary statement against a member's interests, signed by the member, is invalid (10 USC 1219). Any person in the Armed Forces, prior to being asked to sign any statement relating to the origin, incurrence, or aggravation of any disease or injury that the member has suffered shall be advised of his or her right that ~~he or she should sign or be signed.~~ A statement voluntarily provided by the member after such advice may be considered. The member's right not to make a statement is violated if a person, in the course of the investigation, obtains the member'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 member, the member 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/she suffered. If any information is obtained from the member a statement attesting the above warning was given must be attached to the DA Form 2173. Any written correspondence requesting information from the member will also contain the above warning and be attached to the DA Form 2173. If the member is also suspected or accused of any offense under the Uniformed Code of Military Justice, the member ~~should also be advised of his or her rights under Article 31, and right to counsel.~~ ~~See A DA Form 1970 (Rights Warning Procedure/Member Certificate)~~ should be used for such advice.

d. The commander will thoroughly review chapters 40 and 41 for any additional pertinent procedures or special considerations before conducting and completing the investigation.

e. 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.

40-4. LD determination

a. The final determination of an informal investigation can result in a finding of "in line of duty" only, except for those cases in described in paragraph 41-10a.

b. ~~The mere fact that the service member was in an "authorized status" (duty, pass, leave, etc.) does not support a finding of "in line of duty" in and of itself.~~

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

d. A formal line of duty is required if the injury, disease, or death occurred under unusual or doubtful circumstances; or if the person affected by the investigation (to include NOK) requests one; or the complexity of the case warrants one; or for any other circumstance outlined in paragraph 39-2c.

e. In death cases, see paragraph 41-12.

f. If a formal investigation is required or requested, the unit commander need not

enter the details of the incident in item 30, however, the reason a formal investigation is required will be entered.

40-5. 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 file.

b. Any of the following, if applicable:

(1) ~~Statements or written reports~~ indicating that the member was ~~warned~~ of his or her right not to make a statement.

(2) ~~Police reports.~~

(3) ~~Medical documentation.~~

(4) ~~Statements.~~

(5) ~~ARNG~~: Copy of the training schedule for periods of IDT exceeding 2 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 AT orders for periods of AT totaling less than 15 days.

(8) ~~ARNG~~: Copy of orders for any period of FTTD performed under 32 USC 504 or 505.

(9) Other supportive documentation pertinent to the investigation.

40-6. Appointing/approval authority

a. The LD appointing authority is normally the SPCMCA (commander of at least a battalion/squadron size organization for ARNG) of the unit to which the person was assigned or attached at the time of the incident (para 38-8). Except within the ~~ARNG~~, the appointing authority may approve informal investigations.

b. 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 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 findings. In appropriate cases, the assistance of the servicing judge advocate may be requested.

c. Appointing/approving authorities 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, appointing authorities will require compliance with instructions or valid reasons for noncompliance before forwarding the report.

d. After the informal investigation has been reviewed, the approving authority will take action "By Authority of the Secretary

of the Army." (See table 40-1 for appropriate action.) Appropriate delegation of authority documents will be attached.

e. Notification of completed actions will be accomplished per paragraph 40-12.

f. If a formal investigation is required; requested, or otherwise deemed appropriate, the appointing authority must appoint an investigating officer immediately.

Section II Formal Investigations

Table 40-1 Processing Informal Investigations

Person: MTF commander (See note 2)
Action: Complete five copies of section I, DA Form 2173. Send the original and three copies to the member's unit commander and one copy to the supporting MILPO. (See notes 3, 4, 5, 11)
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: No later than 10 days after incident (See note 1)

Person: Individual's unit commander
Action: Complete section II, DA Form 2173, attach support documents, and send original and two copies to the appointing authority for units in area in which the incident occurred. (See note 10)
Completion: 30 calendar days after incident (See note 1)

Person: Appointing Authority
Action: Review the 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 or injury (when appointing authority is the approving authority).
"Reviewed for completeness. In Line of Duty." (See note 6) Retain one copy, send original to Official Military Personnel File (OMPF) (See note 7) and send one copy each to the member's unit commander and the final approving authority. (See notes 3, 8)

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

(3) For deaths: "Reviewed for completeness. No determination made," followed by appropriate command line. Send original and two copies to the final approving authority.

b. If disapproved, direct a formal investigation.
Completion time: 35 calendar days after incident (See note 1)

Person: Final Approving Authority
Action: Review the investigation for completeness and required documents.

a. If approved, annotate as outlined under appointing authority a.(1) or (3) above.

(1) For disease or injury: Retain one copy, send original to OMPF and one copy to member's unit commander. (See notes 3, 8, 9, 12)

(2) For deaths: Retain one copy and send original and one copy through casualty reporting channels to HQDA, (DAPC-PES), Alexandria VA 22331-0460.

b. If disapproved, return to the appointing authority and direct a formal investigation.
Completion time: 40 Calendar days after incident (See note 1)

Notes:

1. If investigation extends beyond time limits, see paragraph 41-4.

2. Commander having physical or administrative responsibility for MTF in which individual is treated or pronounced dead.

3. An extra copy of DA Form 2173 will be prepared for National Guard personnel attending service school under the jurisdiction of the Army or on ACT under REP-83. This copy will be filed in the individual's field MPRJ which is returned to the State Adjutant General at the end of service school or ADT.

4. For USAR and ARNG personnel who are injured during authorized training and are treated by a civilian doctor, the doctor and the unit commander should complete DA Form 2173.

5. If incident occurred while the member was away from his unit (i.e., on leave, intransit, AWOL, etc), complete Section I, DA Form 2173 and send to the nearest Army unit with appointing authority (State MILPO for ARNG) in the area of the MTF. However, if the incident occurs during a period when the member and his/her 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 supporting documentation requested by the parent installation, MILPO or responsible unit commander.

6. Followed by command line of "BY AUTHORITY OF THE SECRETARY OF THE ARMY".

7. For officers: HQDA (DAPC-MSR), Alexandria, VA 22332-0400.

For enlisted: Commander, US Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249-5301.

USAR Personnel: Commander, US Army Reserve Components Personnel and Administration Center, 9700 Page Boulevard, St. Louis, MO 63132
ROTC cadets: In accordance with AR 145-1.

8. Accomplish notification actions required by paragraph 40-12.

9. An approved copy of LD investigation should be returned to the initiating MTF on all injuries on National Guard and USAR members on AD for 30 days or less, or IADT, when they are patients.

10. USAR units conducting LD investigations will submit the LD investigation to the CAC listed in Appendix B having jurisdiction over the area where the injury occurred for final processing.

11. The MTF will send the original and four copies to the State MILPO (Appendix D) for the member's unit if the member is not Federalized and/or attending an active Army service school.

12. For 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 USPF of the State, the unit commander for filing in the member's MPRJ, and the member IAW Para 40-12.

40-7. Investigating officer (IO)

When a formal LD investigation is to be conducted an IO must be appointed (sample appointment DF is at exhibit A, fig 40-5.) The IO may be a commissioned officer, warrant officer, or a commissioned officer of another US Military Service in joint active service where the Army has been designated as Executive Agent. USAR commissioned officers may be appointed as investigating officers during reserve training sessions. The

IO will be senior in grade to the member being investigated, except where the appointing authority determines that it is impracticable because of military exigencies (but not because of mere inconvenience).

40-8. 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 while conducting the investigation. 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 Statement of Medical Examination and Duty Status (DA Form 2173) will be prepared as follows:

(1) The MTF commander (attending physician or patient administrator) will initiate and complete section I, DA Form 2173. This section will show the nature and extent of the injury or disease (See para 40-2c.) 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 member's unit commander for completion; 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 (Appendix G for the member's unit if the member is not Federalized and/or attending an active Army service school.

(2) The unit commander will complete section II, DA Form 2173, to show duty status at the time of the incident (see para 40-2c). If the member 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 member was informed of the restriction.

(d) If the member'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 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 I and II 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. Warning required before requesting statements regarding disease or injury. (See para 40-3c).

e. Collecting the evidence.

(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. Figure 40-5 is a sample formal investigation.

(2) All findings of fact must be supported by evidential exhibits. Written statements by the IO describing matters personally observed and learned by the IO, are convenient means to document facts and, when appropriate, shall be attached; however, a statement by the IO should not be used as a substitute for witness statements when such 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, SSN, organization, and station of the service member killed or injured as an incident of 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 at which the incident in question occurred; and photographs, maps, charts, diagrams, or other exhibits which 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) When the person involved is a member of a reserve component (USAR or ARNG), complete information as to his or

her status in relation to extended active duty, ADT, IDT, etc. (or travel to or from such duty) at the time of the incident.

(g) When relevant, 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. 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 intoxicating 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) When relevant, evidence regarding the mental competence or impairment of the deceased or injured person. 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 as to 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 deaths resulting from accidents involving unusual or suspicious circumstances (such as a single car motor vehicle accident) or where the mode of death is equivocal, a psychological autopsy will be conducted by a mental health officer as defined by AR 40-216.

(i) Documentation that statements solicited from an injured service member with respect to the incurrence or aggravation of his or her disease or injury are in compliance with paragraph 40-8d.

(j) The IO will review chapter 41 for any additional pertinent procedures or special considerations before conducting and completing his or her investigation.

f. Reports of Investigation—Line of Duty and Misconduct Status (DD Form 261) will be prepared as follows:

(1) The IO will prepare his or her report on DD Form 261. Instructions for completion of DD Form 261 are in figure 40-5.

(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 9g, DD Form 261, when appropriate. If additional space is needed, the IO may continue on a separate sheet of bond paper, identifying, at the top, the name of individual concerned, SSN, date of injury, death, or onset of disease.

(a) Summary of circumstances and basis for findings.

(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 member.

(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, Statement of Medical Examination and Duty Status.

(c) Documentation attesting that statements solicited from an injured member regarding the incurrence or aggravation of his disease or injury are in compliance with paragraph 40-8d.

(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, etc, if relevant.

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

(j) Statement from medical authorities (on SF 544 or other appropriate form) on period of hospitalization because of injury or disease. This form 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. When possible, the original copy of each exhibit will be attached to the original of the report. If necessary to type a copy of the original for any reason (e.g., illegibility, additional copies, or translation) the original will also be attached. 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 (e.g., 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 of sufficient quality to reproduce legible copies by photography or duplication.

(6) If an adverse finding is contemplated against the service member, based upon information obtained in the investigation, the IO will notify the member, in writing, of the proposed adverse finding and provide a copy of the investigation and supporting evidence. (Sample notification letter is at exhibit K, fig 40-5.) The member will be warned per paragraph 40-8d and given a reasonable opportunity to reply, in writing,

and to offer rebuttal. Certified mail should be used and the signed receipt attached to the LD investigation. If no response is received, the IO may conclude the investigation and finalize his or her findings. If a response is received, the IO will review and evaluate the member's response prior to making his or her findings.

(7) When the IO has completed the investigation and prepared his or her report, he or she will mark the appropriate LD finding in item 10 of DD Form 261, only in cases involving injury and disease; LD finding will not be made in death cases. (See para 41-12.) In every formal 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 F will be fully considered. The IO will complete the box to the right of item 10 and send the report to the appointing authority.

40-9. Appointing authority

a. Appointing authorities 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, appointing authorities will require compliance with instructions or valid reasons for noncompliance before forwarding the report.

b. The appointing authority will refer the report of investigation to the servicing judge advocate for legal review and opinion. The ARNG will refer ARNG reports of investigation to a judge advocate or licensed attorney (non-JAG) member of the ARNG, designated by the State adjutant general. The opinion rendered will be attached to the investigation. The judge advocate's review will—

(1) Determine whether legal requirements have been complied with.

(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 findings of the investigation are supported by substantial evidence or lack of it.

(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. The appointing authority will complete the appropriate block on the DD Form 261, approving or disapproving the findings of the IO. In no case, however, will the appointing authority "disapprove" without stating the reasons for disapproval and giving the new findings. If the proposed new findings are different from those of the IO and adverse to the service member, the member will be advised by the appointing authority in the same manner as provided in paragraph 40-8f(6). The identity of the headquarters must be clear and include a complete address. If the address includes an

APO, the city of the U.S. Post Office and APO number will be given. Attach delegation of authority documents, if applicable, and forward the report of investigation to the approving authority (reviewing authority in the ARNG)

40-10. Reviewing authority (ARNG only)

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

b. The reviewing authority will complete the appropriate block on DD Form 261, approving or disapproving the findings of the appointing authority. In no case, however, will the reviewing authority "disapprove" without stating the reasons for disapproval and giving the new findings. If the new proposed findings are adverse to the service member and the member has not been previously advised of the adverse finding per paragraph 40-8f(6), the member 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. If the address includes an AFO, the city of the US Post Office and APO number will be given. Attach delegation of authority documents, if applicable, and forward the report of investigation to the final approving authority.

40-11. Final approving authority

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

b. The final approving authority will make his/her entry on the extreme bottom or on the back of DD Form 261. The final approving authority will approve or disapprove the findings 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 findings. If the new proposed findings are adverse to the service member and the member has not been previously advised of the adverse finding per paragraph 38-8f(6), the member will be so advised and his/her response, if any, will be considered before taking action.

c. The identity of the headquarters must be clear and include a complete address. If the address includes an APO, the city of the US Post Office and APO number will be given.

d. Officers acting with delegated authority will include a copy of the delegation document in the LD case file to preclude future questions as to his legal authority to act under this regulation.

40-12. Disposition of completed actions

Reports of investigation will be disposed of as shown in tables 40-1 and 40-2.

a. In death case, there will be no notification.

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 member was last known to be assigned. Request that it be forwarded to the member if he or she has been transferred. The person's station or unit commander will ensure that the member signs for the delivered LD investigation. When appropriate, certified mail should be used. The signed receipt will be filed with LD investigations maintained by the final approving authority. The approving authority will withdraw exhibits that contain classified information and CID reports before the report of investigation is sent. He/she will note on DD Form 261 that the member's copy has been furnished and include the date. The member's copy will be sent by letter. It will inform him or her—

(a) Of his or her right to appeal an adverse finding as provided in paragraph 41-16 and of his/her right not to make a statement as provided in paragraph 40-8d.

(b) If certain documents have been withdrawn, why it was done, and who is the releasing authority. The releasing 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 (see AR 640-10 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) In the case of USAR members who have returned home after completion of ADT, IADT, AT, FTID, or IDT, to the individual through the Commander, US Army Reserve Components Personnel and Administration Center, 9700 Page Blvd., St. Louis, MO 63132-5200.

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

(1) For officers, send to HQDA (DAPC-MSR), Alexandria, VA 22332-0400.

(2) For enlisted personnel, send to the Commander, USA Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249-5301.

Table 40-2

Processing formal investigations

Person: MTF Commander

Action: Complete five copies of section I, DA Form 2173. Send original three copies to the member's unit commander and one copy to the supporting MILPO (See notes 3, 4, 5, 15)

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 II, attach supporting documents, and send original and three copies to the LD appointing authority.

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

Person: Appointing Authority

Action: Appoint a disinterested officer, by letter or DF, to conduct the investigation. (See note 6)

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

Person: Investigating Officer

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

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

Person: Appointing Authority

Action: Review the investigation, complete the block titled "Action by the Appointing Authority" on DD Form 261. Retain one copy of the report and send the original and two copies to the final approving authority (or reviewing authority for ARNG). (See notes 7, 8, 17)

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

Person: Reviewing Authority (ARNG only)

Action: Review the investigation, complete the block titled "Action by the Reviewing Authority" (See notes 8, 9) on DD Form 261, and send the original and two copies to final approving authority.

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

Person: Final Approving Authority

Action:

a. Review the investigation and enter the official designation of the headquarters, the date, approval or disapproval of the findings (see below), signature, and signature block. (See note 9)

(1) For disease or injury, one of the following:

(a) Approved BY AUTHORITY OF THE SECRETARY OF THE ARMY;

(b) Disapproved, substitute the following: Reasons for disapproval are: (Give reasons) BY AUTHORITY OF THE SECRETARY OF THE ARMY

(2) For death cases: "Reviewed for completeness. No determination made." 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 (DAPC-PED) Alexandria, VA 22331-0400. (See note 10)

(2) Disease or injury: Retain one copy and send original to the custodian of the member's OMPF (See note 11) and one copy to the member being investigated. (See note 10, 12, 13, 14, 15)

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

Notes:

1. If investigation extends beyond time limits, see paragraph 41-4.

2. Commander having physical or administrative responsibility for MTF in which member is treated or pronounced dead.

3. An extra copy of DA Form 2173 will be prepared for National Guard personnel attending service school under the jurisdiction of the Army or on ADT under REP-83. This copy will be filed in the member's field MPRJ which is returned to the State Adjutant General at the end of service school or ADT.

4. 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.

5. If incident occurred while the member was away from his unit (i.e., on leave, intransit, AWOL, etc), complete Section I, DA Form 2173 and send to the nearest Army unit with appointing authority (State MILPO for ARNG) in the area of the MTF. However, if the incident occurs during a period when the member 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 supporting documentation requested by the parent installation, MILPO or responsible unit commander.

6. The same officer should be appointed to investigate all injuries or deaths which occurred as a result of a single incident. Officers who can offer evidence in the case and member'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(s) in accordance with AR 27-20 if a separate claims 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.)

7. If the member was a National Guardsman on duty under section 503, 504, or 505 Title 32, US Code, the appointing authority will send the original and two copies of the report of investigation to the State MILPO (Appendix D) from which the individual was ordered to duty. The State AG is the reviewing authority.

8. The appointing, reviewing, and final approving authorities may change a previous finding. When a finding 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.

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

10. Accomplish notification actions required by paragraph 40-12.

11. For officers: HQDA (DAPC-MSR), Alexandria, VA 22332-0400.

For enlisted: Commander, US Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249-5301.

USAR personnel: Commander, US Army Reserve Components Personnel and Administration Center, 9700 Page Boulevard, St. Louis, MO 63132. ROTC cadets: In accordance with AR 145-1.

12. CID reports and classified material will not be included in the copy sent to the member.

13. If finding is "NOT IN LINE OF DUTY," final approving authority must also take action in paragraph 41-18.

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

15. The MTF will send the original and four copies to the State MILPO (Appendix D) for the member's unit if the member is not Federalized and/or attending an active Army service school.

16. 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:

a. Retain one copy for file.

b. USPFO of the State.

c. Unit commander for file in the member's MPRJ.

d. The member IAW para 40-12.

17. USAR units conducting LD investigations will submit the LD investigation to the CAC listed in Appendix B having jurisdiction over the area where the injury occurred for final processing.

Chapter 41 Special Considerations and Other Matters Affecting LD Investigations

41-1. 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. A LD determination is not binding on the issue of guilt or innocence of the member in a separate disciplinary action, the issue of pecuniary liability in a report of survey, or any other administrative determination.

41-2. Criminal Investigation Division and safety investigations

A summary of any report by Army CID agents may be used as evidence in a 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 member.~~

41-3. Combining investigations

a. There is no prohibition against using the same IO to conduct an LD investigation for more than one person involved in the same incident. A separate investigation must be completed for each person involved.

b. There is no prohibition against using the same IO to conduct a report of survey or other investigation in conjunction with the conduct of an LD investigation. Similarly, subject to the requirements of paragraph 40-8d and the limitations of paragraph 41-2, information, statements, and exhibits from other investigations may be included in a LD investigation.

41-4. Time limitations for processing LD actions

LD actions should be completed within the time limits given in tables 40-1 and 40-2. When an 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.

41-5. Legal support

Although LD investigations result in administrative findings, both the members and the IO may obtain legal advice from the supporting JAG office (or licensed attorney-member of the ARNG designated by the State adjutant general) 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 experience difficulties in obtaining reports and records from various civilian agencies. The purpose of legal advice is to protect both the rights of the member and of the Government during the conduct of the investigation. Sworn statements, formal hearings and verbatim transcripts are not required and the member has no right to cross-examine witnesses as in courts of law. However, prior to recommending or approving any determination other than "in line of duty," evidence against the member must be presented to him or her as prescribed in paragraph 40-8f(6).

41-6. 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 MTF patient administrators. 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 judge advocate.

41-7. Unauthorized absence

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

(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 a below, the immediate commander's (company, equivalent unit, or higher level) findings of the member'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 member has been granted leave or special pass, he or she will not be considered AWOL if he or she fails to sign out.

41-8. Medical treatment

a. *Veneral disease.* Venereal disease alone shall not support a misconduct finding if the member has complied with the regulations requiring the member 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 finding will be NLD-NDOM.

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

c. *Hernia.*

(1) Members on active duty who develop a hernia will be considered to have acquired the hernia "in line of duty" unless it was documented at the time of entry into the service.

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

(a) There was no evidence of the hernia at time of 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.

d. *Operations and treatment.*

(1) The LD findings for an operation 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 line of duty" 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) "NLD-NDOM" if such was administered or performed while AWOL. If performed on a member of the Reserve Components, not on active duty, for a disease which was contracted while the member was on ADT, IDT, IADT, AT, or FTTD, the finding is "NLD-NDOM."

e. *Existed prior to service (EPTS).*

(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 finding that it started during short tours of authorized training or duty.

(2) The doctor, during examination and treatment of the member, usually determines an EPTS condition. He or she annotates the medical records as to whether the condition existed prior to service. If an LD finding is required, information from the medical records will be used to support a finding that an EPTS condition was or was not aggravated by military service. If an EPTS condition was aggravated by military service, the finding will be "in line of duty." If an EPTS condition is not aggravated by military service, the finding will be "not in line of duty—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 authorized training (ADT, IADT, AT, FTTD, and IDT for USAR and AT, FTTD, and IDT for ARNG).

(1) A member of the Army is presumed to have been in sound physical and mental condition on entering active service or authorized training. 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 active duty nor in authorized training. The following will be sufficient evidence of inception before service:

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

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

(2) It is further presumed that, even if the provisions of (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 ILD during one period of service or authorized training in any of the Armed Forces which recurs or is aggravated during later service or authorized training, regardless of the time between, should be ILD. The aggravated condition must not be caused by misconduct or willful negligence.

41-9. Traveling directly to or from AD or ADT (AT, FTTD, and IDT for ARNG)

In determining whether the disability or death of a member was caused by any injury while traveling directly to or from AD or

ADT (AT, FTTD, and IDT for ARNG), consider—

a. Whether training was authorized or required (i.e., complying with orders).

b. The hour travel began.

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

d. The method of travel.

e. 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 ADT (AT, FTTD, and IDT for ARNG).

41-10. Intoxication and drug abuse

a. That portion of time in the hospital that a doctor determines a member to be totally physically incapacitated for more than 24 consecutive hours solely because of alcohol or drug abuse will be NLD-DOM. Total physical incapacitation means the member 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 a LD finding. (Hospitalization of less than 24 hours for abuse of alcohol or other drugs does not require a LD finding.) When the person is released from the MTF, the MTF commander, or his or her designee, will inform the member and the member's unit commander, by DF, of the LD finding. To preclude unauthorized access to this information, the DF will be transmitted in a sealed envelope, marked **EXCLUSIVELY FOR** the unit commander of the individual concerned, according to AR 340-15. Suggested format of the DF is shown at figure 41-1. The LD finding may be appealed under paragraph 41-16 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. In order 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 member'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."

41-11. Mental responsibility, emotional disorders, suicide, and suicide attempts

a. The MTF must identify, evaluate, and document mental and emotional disorders.

A member 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 member was unable to comprehend the nature of such acts or to control his or her actions. Therefore, these disorders are considered "in line of duty" unless they existed before entering on 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 service member 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 member'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 member are valuable evidence. In all cases of suicide or suicide attempts, a mental health officer will review the evidence collected to determine the biopsychosocial factors that contributed to the service member'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 service member was mentally sound or unsound at the time of the incident. In all cases of death by suicide, the mental health officer will conduct a psychological autopsy. A report of the psychological autopsy or, in the case of a suicide attempt, the mental health officer's opinion will be attached to the LD investigation.

c. If the member is found mentally unsound, the mental health officer should determine whether the member's mental condition was an EPTS condition aggravated by service or was due to the member's own misconduct. Those conditions occurring before 6 months on active duty 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 ill effect that results from the attempt (including attempts by taking poison or pills), when mental soundness existed at the time, should be considered misconduct.

41-12. Special considerations in death cases

While it is important that all significant and relevant facts be recorded promptly in any investigation involving death, it should be noted that no survivor's benefit statute administered by DA is conditioned upon a misconduct or line of duty determination. To express a finding concerning misconduct or line of duty in death cases serves no useful purpose, and such expressions are not desired by the Veterans' Administration, which makes its own findings. Accordingly,

investigations will express no opinion concerning line of duty status in death cases. Nor shall appointing, reviewing, or approving authorities enter any finding in this regard. If such a finding has been recorded inadvertently or recorded after the injury but before death occurred, the investigation need not be returned for correction. Reviewing authorities should note the error and indicate its lack of validity in a forwarding endorsement.

41-13. Vehicle accidents

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

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

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 driver or drivers and the effect of their mental condition on the accident. In cases of death due to a single car motor vehicle accident, a psychological autopsy will be conducted by a mental health officer to investigate the possibility of suicide.

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 which 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.

41-14. 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 member's rights in accordance with paragraph 40-8d be given and documented before the injured service member 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 present.

(2) Description of physical location of incident and 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. In cases where death results from a self-inflicted gunshot wound, a psychological autopsy will be conducted by a mental health officer to investigate the possibility of suicide.

41-15. 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 member's statement, if any, as well as statements by witnesses will be recorded on DA Form 2823 (Witness 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 in the performance of his or her duties under Article 136, UCMJ.

41-16. Appeals

a. The member may appeal, in writing, within 30 days after receipt of the notice of the finding required by paragraph 40-12. For appeals not submitted within this time limit, the reason for delay must be fully justified. The appeal must be personally signed by the member unless the member is physically unable to sign or is mentally incompetent. In such cases, the appeal will include evidence of the condition that prevented the member from personally signing. Appeals will be submitted as follows:

(1) If a member is assigned within the geographic area of responsibility of the original final approving authority or is a member 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 finding 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 finding, it will be so stated, by endorsement, and the appeal will be sent to HQDA (DAPC-PED), ALEX VA 22331-0400, for final review and determination.

(2) If a member is no longer assigned in the geographic area of responsibility of the original final approving authority, the member may send the appeal directly to HQDA (DAPC-PED), Alexandria, VA 22331-0400.

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

c. Assistance with appeals may be obtained from the member's supporting judge advocate's office and/or MILPO. In the ARNG, judge advocate or licensed attorney (non-JAG) member of the ARNG, named by the State adjutant general.

41-17. Revision or correction of LD findings

The Secretary of the Army or CG, MILPERCEN, acting for the Secretary, may at any time change a finding 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 other evidence is considered which supports a NLOD finding, the member must be informed of the proposed change, its basis, and his or her rights under paragraph 41-8d, and be given a chance to respond in writing. Any statement or evidence that the member 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 finding 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.

41-18. Processing cases for physical disability separation

The agencies that process cases for physical disability separation are not bound by prior LD findings. When the US Army Physical Disability Agency (USAPDA) believes that a prior LD finding may be incorrect for any reason, a request for review should be sent to HQDA (DAPC-PED) Alexandria, VA 22331-0400, clearly detailing the reason for such action.

41-19. 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 (e.g. 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 casualty area commander. If requested, an appropriate investigation shall be conducted and the report of investigation forwarded IAW the request. No further action need be taken within DA.

1 March 1988

Military Personnel

LINE OF DUTY AND MISCONDUCT DETERMINATION

ASSD DIR	ASSD ADJ	SUP ANCD	FMG	PLIS	TAD
SEC	Department of Military and Veterans Affairs				DEP
ACGT	FEB 22 1988				
PERS	Administrative & Services Division				
NOTE:					

This regulation explains the requirements for line of duty (LOD) and misconduct determinations and gives processing instructions. It implements 5 U.S.C. 2108, 3309-3315, and 8140; 10 U.S.C. 507, 972(5), 1074, 1074a, and 1201-1221; 32 U.S.C. 318-319; 37 U.S.C. 204(g), 204(h), 403(l), and 802; 38 U.S.C. 310, 331, 610, and 612. It applies to commanders at all levels, medical facilities at all levels, consolidated base personnel offices (CBPO), consolidated reserve personnel offices (CRPO), base chiefs of administration, staff judge advocates, and records custodians. This regulation applies to members and units of the Air National Guard (ANG) and the USAF Reserve (USAFR).

This regulation is affected by the Privacy Act of 1974. Each form or format subject to AFR 12-35 and required by this publication has a Privacy Act Statement, either in the body of the document or in a separate statement accompanying it.

Proposed supplements that affect any military personnel function are processed as required in AFR 5-13.

Notwithstanding any other provision of this regulation, the Secretary of the Air Force, or his or her designee, may revise any determination made under this regulation.

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Chapter 1

GENERAL PROVISIONS

Section A—Explanation of LOD and Misconduct Determinations

1-1. Legal Basis. Federal laws require determining whether certain diseases, injuries, or death are suffered by military members while in an LOD status and whether such diseases, injuries, or death are the result of a member's own misconduct. These findings are used by:

a. The Air Force to determine:

(1) Eligibility for physical disability retirement or separation (10 U.S.C. 1201-1221).

(2) Lost time required to be made good (10 U.S.C. 972(5)).

(3) Forfeiture of pay when absent from duty due to disease caused by intemperate use of alcohol or habit forming drugs (37 U.S.C. 802).

(4) Eligibility of certain members of the United States Air Force Reserve (USAFR) and of the Air National Guard of the United States (ANGUS) for medical care and for pay and allowances (10 U.S.C. 1074a, 32 U.S.C. 318-319, and 37 U.S.C. 204(g), 204(h)).

(5) Eligibility for surviving dependents of deceased active duty personnel to continued occupancy in military family housing for up to 90 days after the member's death or continued payment of the deceased's quarters allowance for up to 90 days following death (37 U.S.C. 403(l)). LOD determinations made to ascertain entitlement to these benefits are not entered for the purpose of determining any other benefit or entitlement administered by the Air Force or other federal agency. Accordingly, such LOD findings should not be considered as binding determinations for use in administering other benefits or entitlements.

b. The Veterans Administration to determine eligibility for disability compensation and hospitalization benefits (38 U.S.C. 310, 331, 610, and 612).

c. The Civil Service Commission to determine eligibility for Civil Service preference (5 U.S.C. 2108 and 3309-3315).

d. The Secretary of Labor to determine the eligibility of an Air Force Reserve Officer Training Corps (AFROTC) cadet for compensation for injuries sustained while training (5 U.S.C. 8140).

1-2. Persons for Whom LOD and Misconduct Determinations Are Made:

a. Members of the Regular Air Force who serve on active duty or who are traveling to or from such duty.

b. Members of the USAFR and the ANGUS who:

(1) Incur or aggravate an injury, illness, or disease while on active duty, while performing active duty for training for any period of time, or while on inactive duty training.

(2) Incur or aggravate an injury, illness, or disease while traveling to or from the place at which the member performs active duty or active duty for training for a period of more than 30 days.

(3) Incur or aggravate an injury, illness, or disease while traveling directly to or from the place at which that member is to perform or has performed active duty for a period of 30 days or less or inactive duty training. NOTE: If there is a question about the circumstances of a given case (such as determining when a disease or illness was contracted, determining whether a disease or illness was contracted or aggravated as an incident of inactive duty training, or whether the injury occurred while a member on inactive duty for training was traveling directly to or directly from the member's duty location), an LOD and misconduct determination should be made.

(4) Died on active duty while serving under conditions that make them eligible to receive basic allowance for quarters (BAQ) with either a variable housing allowance (VHA) or an oversea housing allowance (OHA) and who left surviving dependents qualifying for benefits under 37 U.S.C. 403(l). (Refer to paragraph 1-5 for explanation.)

c. AFROTC cadets who are injured while flying or while in flight instruction, or who are injured while traveling to or from, or while attending, field training under 10 U.S.C. chapter 103. AFROTC cadets, who get a disease or illness that is the proximate result of the performance of the training specified above, are considered to have been injured during the period (5 U.S.C. 8140).

d. Cadets of the United States Air Force Academy (USAFA).

e. Military members of the other United States Armed Forces attached or assigned to an Air Force unit or being treated at an Air Force medical facility.

1-3. When Determinations Are Required. You need an LOD and misconduct determination when a member, whether hospitalized or not, has a disease or injury that results in:

a. The inability to do military duties for more than 24 hours;

b. The likelihood of a permanent disability; or

c. Death, when there are surviving dependents (paragraph 1-5).

1-4. Need for Prompt and Accurate Action. An LOD and misconduct determination must be completed before the Physical Evaluation Board (PEB) may determine the member's eligibility for benefits. Failure to process the LOD and misconduct determinations may result in the case being returned for a formal investigation. This delays processing of disability retirement and separation cases under AFR 35-4. This can cause great hardship and inconveniences to the member. Delays can also cause overpayments in cases involving drug and alcohol related injuries. Commanders, hospital commanders, personnel officers, and staff judge advocates must place emphasis on the need for prompt action under this regulation.

1-5. Effect of Death on LOD and Misconduct Determinations:

a. An LOD and misconduct determination is necessary to determine eligibility for benefits under 37 U.S.C. 403 (1) authorizing payment of a continued housing allowance, not to exceed 90 days, or permitting continued residency in military family housing for up to 90 days for surviving dependents of deceased active duty military personnel who died in the line of duty. An LOD and misconduct determination will only be conducted following the death of an active duty member leaving surviving dependents on whose behalf the deceased was entitled to receive BAQ at "with dependents" rate or such qualifying dependents who otherwise reside in military family housing. No LOD and misconduct determination will be conducted following the death of any other military personnel. (Refer to paragraph 1-2b(4) for requirement to conduct an LOD and misconduct determination following the death of a member of the USAFR or ANGUS on active duty.)

b. Follow the procedures in this regulation for conducting LOD and misconduct determinations in death cases of members with qualifying dependents. These LOD and misconduct determinations are conducted separately from and in addition to the processing of death cases under AFR 30-25, Casualty Services. If a member with qualifying dependents dies while an LOD and misconduct determination is in progress, the investigation shall continue processing for a final LOD determination. If a member without qualifying dependents dies while the LOD and misconduct determination is in progress, further action under this regulation is suspended and the case will be processed under AFR 30-25.

Section B—Explanation of Terms

1-6. Absent Without Authority. A member is considered "absent without authority" if he or she is

voluntarily absent without leave for more than 24 hours, or was voluntarily absent from a scheduled duty or formation, a restriction, or an arrest. Scheduled duty or formation means a specified task to be done at a specified time and place for a specified purpose. It is not the same as regularly scheduled duty. A member is also considered "absent without authority" if he or she is absent from duty in civil confinement for more than 24 hours and the absence is not excused. The term "absent without authority" is the same as "unauthorized absence."

1-7. Alcohol Abuse. The use of alcoholic beverages leading to a person's misconduct, or to impairment of duty performance, or physical or mental health. It is excessive use of alcoholic beverages under all of the circumstances of the case. Consideration should be given to, but not limited to, the amount, type, and intoxicating effect of the alcoholic beverage used; the period of time over which it was used; and the physical condition of the user. It is the same as "intemperate use of alcohol."

1-8. Alcoholism. A psychological or physical dependence on alcohol.

1-9. Disease. A condition of an organ, part, structure, or system of the body in which there is incorrect function resulting from the effect of heredity, infection, diet, or environment. It is the same as illness, sickness, or ailment. See paragraph 1-2c when AFROTC cadets are involved.

1-10. Drug Abuse. Intentional use of drugs in any amount when such use has not been authorized by qualified medical authority for specific medical treatment or for other legitimate purposes. It is the same as "intemperate use of drugs."

1-11. Drugs. Substances identified as controlled substances by the Attorney General of the United States acting pursuant to the authority of 21 U.S.C. 811 and published in 21 Code of Federal Regulations (CFR) 1308. A list of commonly abused drugs appears in AFR 30-2.

1-12. Existed Prior to Service (EPTS). Term added to a medical diagnosis where there is clear evidence that a disease or injury, or the underlying condition causing it, existed before the member's entry into military service or between periods of service, and was not aggravated by service. EPTS diseases include chronic diseases and diseases with an incubation period that rule out a finding that they started during inactive duty training, active duty training, or tours of active duty.

1-13. Habit Forming Drugs. Drugs that can lead to either physical or psychological dependence.

1-14. Injury. Includes such conditions as fractures, wounds, strains, sprains, dislocations, concussions, and compressions. In addition, it includes conditions resulting from extremes of temperature or prolonged exposure. Acute poisonings (except those due to contaminated food) resulting from exposure to a toxic or poisonous substance are also classed as injuries. See paragraph 1-2c when AFROTC cadets are involved.

1-15. In Line of Duty. This determination is made unless a preponderance of the evidence supports the finding that the member's disease, injury, or death was incurred while the member was absent without authority or was proximately caused by the member's own misconduct. The meaning of "line of duty" in this regulation is confined to the purpose of this regulation. It is completely distinct from usage under the Federal Tort Claims Act, 28 U.S.C. 2671, and has no bearing on the meaning or application of the phrase "acting within the scope of his office or employment" as used in that Act.

1-16. Intentional Conduct. An act, by commission or omission, done on purpose.

1-17. Mental Responsibility. We presume that all members are mentally responsible for their acts, unless there is contrary evidence. This presumption usually means it is unnecessary to pursue the issue of mental responsibility. However, when there is credible evidence of lack of mental responsibility, the issue must be resolved. Such evidence may consist of the circumstances surrounding disease, injury, or death, previous abnormal or irrational behavior, expert opinion, or other evidence directly or indirectly pointing toward lack of mental responsibility. Members may not be held responsible for their misconduct and its foreseeable consequence if, as a result of mental disease or defect, they lack substantial capacity either to appreciate the wrongfulness of the conduct or to conform the conduct to the requirements of law. As used here, the term "mental disease or defect" does not include an abnormality manifested only by repeated wrongful or otherwise antisocial behavior. Members whose mental faculties are impaired as a result of their own prior misconduct, such as by taking a hallucinogen, are mentally responsible.

1-18. Misconduct. Intentional conduct that is wrongful or improper. Also, willful neglect.

1-19. Not in Line of Duty, Due to Own Misconduct. This determination is made when a preponderance of the evidence supports the finding that the member's disease, injury, or death was proximately caused by the member's own misconduct. This determination is made regardless of whether the member was absent without authority.

1-20. Not in Line of Duty, Not Due to Own Misconduct. This determination is made when a preponderance of the evidence supports the finding that the member's disease, injury, or death was incurred when absent without authority, and the disease, injury, or death was not proximately caused by the member's own misconduct. This determination is also made in the following special cases even if the member was not "absent without authority" at the time.

a. A Regular Air Force member, USAFR member, or ANGUS member was injured or got a disease while traveling to or from active duty and had materially deviated from the "authorized" travel route (paragraphs 1-2b(2) and (3)).

b. A USAFR member or an ANGUS member was injured or aggravated an injury while traveling either to or from inactive duty training or to or from a period of active duty for 30 days or less and had materially deviated from the "authorized" travel route (paragraph 1-2b(3)).

NOTE: If the known facts raise a question whether the member materially deviated from the authorized travel route, an LOD and misconduct determination must be made.

1-21. Proximate Cause. It is the cause that, in a natural and continuous sequence unbroken by an independent and unforeseeable new cause, results in the disease, injury, or death and without which the disease, injury, or death would not have occurred. Proximate cause may also be described as the primary moving cause or predominating cause, and is the connecting relationship between the intentional misconduct or willful negligence of the member and the disease, injury, or death that results as a natural, direct, and immediate consequence that supports a "not in line of duty" due to own misconduct determination. As a general rule, to warrant a finding that an act of misconduct was the proximate cause of disease, injury, or death, it must appear that, in light of all attending circumstances, it could reasonably have been anticipated by the member concerned that disease, injury, or death might result from such misconduct.

1-22. Preponderance of the Evidence. The greater weight of credible evidence. That evidence that, when fairly considered, produces the stronger impression and

is more convincing as to its truth when weighed against the evidence in opposition thereto.

1-23. Under the Influence of Alcohol or Drugs. Any intoxication caused by alcohol or by drugs that is sufficient to impair sensibly the rational and full exercise of the mental or physical faculties.

1-24. Willful Neglect. An act or acts of omission or of commission that evidence a reckless or wanton disregard for their attendant consequences. That is conduct that indicates a member exhibited a reckless or wanton disregard for his or her own personal well-being or for the well-being of another. Same as gross negligence.

Chapter 2

THE LOD AND MISCONDUCT DETERMINATION

Section A—Standards Applicable to LOD Determinations

2-1. LOD Determinations Following Disease, Injury, or Death of Member Leaving Surviving Dependents:

a. It is presumed that a member's disease, injury, or death was incurred in line of duty and not due to misconduct unless it is shown by a preponderance of the evidence that the disease, injury, or death:

- (1) Was proximately caused by the member's own misconduct; or
- (2) Occurred while the member was absent without authority.

NOTE: Refer to chapter 1, section B for explanation of terms.

b. Separate determinations required are:

(1) LOD status is determined by finding if the member was or was not absent without authority at the time the disease, injury, or death of member was incurred or by finding if misconduct of the member proximately caused the disease, injury, or death.

(2) Misconduct status is determined by finding if the member's disease, injury, or death was proximately caused by his or her own misconduct.

2-2. Evidence:

a. LOD and misconduct determinations should be made on the basis of all available evidence considering:

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

b. There is no distinction 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 officers and higher authorities accomplishing the following actions:

- (1) Considering all the evidence.
- (2) Evaluating factors, such as witnesses 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.

c. In formal investigations, investigating officers gather evidence and complete the investigation follow-

ing the procedures in attachment 2. (Special care must be taken before requesting a written statement from the subject of the investigation who has a disease or injury.) In all cases, the member must be advised of his or her rights under 10 U.S.C. 1219. (See attachment 2, paragraph A2-4b on the type of advice.) The member must also be advised of his or her rights under Article 31, Uniform Code of Military Justice (UCMJ), if he or she is suspected of having committed an offense under the UCMJ.

2-3. EPTS Diseases or Injuries. EPTS is explained in paragraph 1-12. These diseases or injuries are found to be "EPTS, LOD not applicable."

Section B—Four Possible Determinations

2-4. In Line of Duty:

a. **EXAMPLE 1.** A member becomes a battle casualty sustained in war or a casualty due to hostile action when war has not been declared.

b. **EXAMPLE 2.** A member is injured or dies leaving surviving dependents, while present for duty. The injury was not proximately caused by the member's own misconduct.

c. **EXAMPLE 3.** A USAFR or ANGUS member is injured while performing inactive duty training or while traveling to or from inactive duty training. The injury was not proximately caused by the member's own misconduct.

2-5. EPTS, LOD Not Applicable:

a. **EXAMPLE 1.** After enlisting, a member suffers a recurrence of malaria that was contracted before enlisting and that was not aggravated by military service.

b. **EXAMPLE 2.** A USAFR or ANGUS member becomes ill during a 3-day tour of active duty for training. The illness is medically diagnosed as a disease that was contracted before the start of the 3-day tour of active duty for training at a time when the member was not serving on any tour of active duty, active duty for training, or inactive duty training. Also, it is determined that the disease was not aggravated by military service.

2-6. Not in Line of Duty, Not Due to Own Misconduct:

a. **EXAMPLE 1.** A member is injured or dies leaving surviving dependents while absent without leave

(AWOL). The injury or death was not proximately caused by the member's own misconduct.

b. **EXAMPLE 2.** A USAFR or ANGUS member incurs an injury while returning home after performing inactive duty training. The accident occurred at a time and place constituting a material deviation from the member's authorized travel route. The injury was not proximately caused by the member's own misconduct.

c. **EXAMPLE 3.** A member is AWOL at the time of being captured or taken hostage by a hostile group and, thereafter, is injured, becomes ill, or dies leaving surviving dependents, while being detained in a captive status. The injury, disease, or death was not proximately caused by the member's own misconduct.

2-7. Not in Line of Duty, Due to Own Misconduct:

a. **EXAMPLE 1.** A member is injured or dies leaving surviving dependents while present for duty. The injury or death was proximately caused by the member's own misconduct.

b. **EXAMPLE 2.** A member is injured or dies leaving surviving dependents while AWOL. The injury or death was proximately caused by the member's own misconduct.

c. **EXAMPLE 3.** A USAFR or ANGUS member is injured while performing inactive duty training. The injury was proximately caused by the member's own misconduct.

Section C—How Determinations Are Made and Recorded

2-8. Administrative Determinations. This determination is made by a medical officer alone and an entry is made in the member's medical record. Administrative determinations can be made only in the following cases:

a. Battle casualties sustained in war and casualties due to "hostile action" when war has not been declared. The medical officer makes an "in line of duty" entry.

b. EPTS diseases or injuries. The medical officer makes an "EPTS, LOD not applicable" entry.

c. Diseases, injuries, or death of members leaving surviving dependents, not included in a or b above. The medical officer makes an "in line of duty" entry if:

(1) The disease or death is of natural origin not involving misconduct and not caused by drug or alcohol abuse; or

(2) The injury is a simple injury (sprain, contusion, or minor fracture) not likely to result in a permanent disability; and

(3) The disease, injury, or death was not incurred while the member was absent without authority and was clearly not due to the member's own misconduct.

(4) The injury or death was incurred while a passenger in a common commercial carrier or a military aircraft.

2-9. Informal Determinations. This determination is required when an administrative determination cannot be made but it seems the disease, injury, or death of member leaving surviving dependents, was not incurred while the member was absent without authority and was not due to the member's own misconduct. Informal determinations are recorded on AF Form 348, Line of Duty Determination.

2-10. Formal Determinations. This determination is required when neither an administrative determination nor an informal determination can be made. Formal determinations are recorded on DD Form 261, Report of Investigation Line of Duty and Misconduct Status. The final decision must be supported by a preponderance of evidence in the case file. All matters in the file that have rational probative value may be considered, whether or not that evidence may be inadmissible in a criminal or civil trial under the formal rules of evidence applicable to such a trial.

NOTE: Nothing in paragraph 2-8 or 2-9 is intended to preclude a formal determination in any case where such action is deemed necessary to protect the interests of the member or of the United States.

Chapter 3

PROCESSING REQUIREMENTS

Section A—Responsibilities of the Air Force Medical Facility

3-1. Role of the Medical Facility. Identification of cases in which LOD and misconduct determinations are required is an indispensable link in implementing this regulation. Since a disease, injury, or death of a member leaving surviving dependents, is involved in each case, this task necessarily falls on an Air Force medical facility. However, where this identification is inadvertently not made by the medical facility, commanders, staff judge advocates, and staff officials at all levels are expected to assist by calling the medical facility commander's attention to the oversight.

3-2. The Air Force Medical Facility That Starts the Process. Usually, the responsibility for identifying cases in which an LOD and misconduct determination is required, rests with the Air Force facility that first provides treatment or has administrative control of the patient. Guidelines for initiating an LOD and misconduct determination in unusual circumstances are as follows:

a. Air Force members may be treated first at a place other than at their home installation, including treatment at other than Air Force medical facilities and treatment by civilian physicians. In these cases the Air Force medical facility that first gives treatment, or that is nearest to the non-Air Force facility that first gives treatment, is responsible for making sure that the LOD and misconduct determination process starts.

b. Air Force members may be treated first at their home installations but may then be transferred permanent change of station (PCS), either as a hospital patient or otherwise, before the LOD and misconduct determination process starts. In these cases, the medical facility that initiated treatment remains responsible for starting the process.

c. Members of other services may be treated first at Air Force medical facilities. The medical facility advises the member's commander or the commander of the nearest installation of the applicable service, in writing, of the need for an LOD and misconduct determination. The responsibility for processing the determination then goes to that service; but every reasonable assistance is given the other service by all Air Force agencies.

3-3. Beginning the Process:

a. The medical facility takes one of the actions required by table 3-1, when a Regular Air Force,

USAFR, or ANGUS member on active duty, on active duty for training, or on inactive duty training; or an AFROTC cadet on flight training or on field training; or an Air Force Academy cadet gets a disease or injury resulting in:

(1) An inability to do military duties for more than 24 hours, or

(2) The likelihood of a permanent disability.

NOTE: Refer to paragraphs 1-2 and 1-3 for more details.

b. When the case cannot be resolved by an administrative determination according to paragraph 2-8, AF Form 348 is filled out by the office of Patient Affairs (SGR) for the responsible medical officer to sign. (Use the Guidance in attachment 1.) When a member is initially treated at a medical facility of another armed service, that service's LOD form may be used to start the LOD and misconduct determination process. The AF Form 348 may be attached to the other service's form and processed as usual.

c. Complete three copies of the AF Form 348 and distribute as follows:

(1) Send the original to the CBPO Special Actions Unit (DPMQA) that serves the immediate commander shown in the "TO" block of the form;

(2) File a copy in the member's medical record. For inpatients, the copy should be filed in the member's inpatient records. For outpatients or when treated at another military service's medical facility or at a civilian medical facility, file in the member's outpatient records; and

(3) File a copy in SGR.

d. The base ground safety office may read the AF Form 348 to make sure that reports required by AFR 127-4 have been done.

3-4. Processing LODs in Death Cases When Member Has Surviving Dependents:

a. Special procedures apply to processing LOD and misconduct determinations following the death of a member who leaves surviving dependents. On notification of a member's death, SGR contacts their supporting CBPO to determine whether the deceased member had surviving dependents who qualify for benefits under 37 U.S.C. 403(1). (See paragraph 1-5a for explanation.) Dependents who are authorized military medical care will, in most situations, qualify as beneficiaries under 37 U.S.C. 403(1). The deceased's immediate commander and the casualty assistance representative (CAR) at the CBPO Personal Affairs Office (DPMAP) should be contacted when necessary

to clarify the status of the deceased's surviving dependents. Information from the Defense Enrollment Eligibility Reporting System (DEERS) or other automated systems capability may be reviewed to verify whether or not the deceased had surviving beneficiaries.

l. When surviving dependents have been identified, the medical facility initiates an LOD and misconduct determination. An administrative determination of "in line of duty" will be entered in the deceased's medical records by the responsible medical officer if death is the result of:

(1) Battle casualty or hostile action (paragraph 2-4).

(2) Natural causes not involving misconduct and not occurring while absent without authority.

(3) An accident while a passenger on a commercial carrier or military aircraft and not occurring while absent without authority.

c. When the case cannot be resolved by an administrative determination according to paragraph 2-8, AF Form 348 is filled out by SGR for the responsible medical officer's completion. (Use guidance in attachment 1.)

d. Complete four copies of the AF Form 348 and distribute as follows:

(1) Send the original to the CBPO/DPMQA that serves the immediate commander shown in the "TO" block of the form;

(2) File a copy in the deceased's medical records;

(3) File a copy in SGR; and

(4) Forward a copy to the CAR, CBPO/DPMQA.

Section B—Actions of the CBPO and the Commander.

3-5. CBPO/DPMQA Action on AF Form 348. The CBPO/DPMQA referred to is the one that serves the immediate commander of the member who is the subject of the determination. The CBPO/DPMQA that serves the immediate commander of the member who is the subject of the determination has the overall responsibility for ensuring the LOD and misconduct determination are processed in compliance with this regulation in a timely manner. After receiving AF Form 348 from the medical facility, the CBPO/DPMQA:

a. Acts on behalf of the appointing authority.

b. Monitors the progress of the determination by setting up controls and suspenses.

c. Sends AF Form 348 to the immediate commander, and

d. Makes sure the responsible officials complete the actions on time (paragraphs 3-6 through 3-20, and

tables 3-2 and 3-3).

3-6. The Immediate Commander's Action on AF Form 348:

a. The commander of the lowest unit where the member is assigned for strength accounting purposes at the time AF Form 348 is initiated by the medical facility, acts as the immediate commander, except in these cases:

(1) For USAFR members assigned to and training with an AF Reserve (AFRES) unit—the appointing authority may take action on behalf of the immediate commander if the immediate commander is not present for duty during a unit training assembly (UTA) or an annual tour (AT) (paragraphs 3-7a(1) and c).

(2) For USAFR members not serving on extended active duty (EAD) who are attached to an active duty unit for training—the commander of the active duty unit to which the member is attached acts as the immediate commander.

(3) For individual mobilization augmentees (IMA) attached to an ANGUS unit, to another branch of the US Armed Forces, or another agency of the federal government and assigned to the 9002nd, 9005th, 9006th, 9017th, 9018th, 9019th, 9021st, 9025th, 9026th, 9027th, or 9035th Air Reserve Squadrons (ARS)—the base or installation commander of the IMA's unit of attachment, who acts as the immediate commander, signs the AF Form 348 as such. Then sends AF Form 348 to Headquarters Air Reserve Personnel Center (HQ ARPC)/DPMQA, Denver CO 80280-5000, for determination of and forwarding to the appointing authority. Unless otherwise stated, LOD determinations on all other IMAs are processed according to this regulation.

(4) For AFROTC cadets in flight training—the AFROTC site commander at the flying training site acts as the immediate commander.

(5) For AFROTC cadets in field training—the officer exercising special court-martial jurisdiction over the base where the training is done acts as the immediate commander.

(6) For AFROTC cadets in all other cases—the AFROTC Detachment Commander at the school where the cadet is enrolled acts as the immediate commander.

b. Responsibilities:

(1) Investigate the circumstances of the case.

(2) Fill out the applicable portion of the reverse of AF Form 348 (see attachment 1).

(3) Send the AF Form 348 to the appointing authority through the servicing staff judge advocate. For USAFR members, the AF Form 348 is sent to the appointing authority.

3-10. Appointing the Investigating Officer:

a. Investigating officers are appointed on special orders. The appointing authority directs special orders to be published according to AFR 10-7. The special orders cite this regulation as authority, state the reason for the appointment, and designate a suspense date for submission of the investigating officer's report (usually 14 workdays from the date of the order). See AFR 10-7 for format. The appointing authority may extend the period of investigation if warranted by the circumstances.

b. Investigating officers should be disinterested officers in the grade of captain or above who are either senior in grade or, if of the same grade, senior in date of rank to the member being investigated. If an officer is appointed who does not meet these criteria, the appointing authority prepares a memo justifying the appointment made. This memo is placed with the appointing orders when they become a part of the investigative file.

c. Where determinations of the LOD and misconduct status of more than one member arising from a single incident are necessary, one investigating officer should be appointed to do all the investigations with instructions to make separate investigative files on each subject.

d. When an incident occurs at a place away from the appointing authority, an investigating officer from the base nearest to where the incident occurred should be appointed with the concurrence of the commander concerned. Alternatively, the commander of the base nearest to where the incident occurred may appoint the investigating officer, based on the request of the appointing authority. The request will be cited in the order of appointment. Direct communication between the two commands is authorized and encouraged to ease the appointment of an investigating officer at the place where the investigation can best be carried out.

3-11. CBPO/DPMQA Action After Completing the Informal Determination. When the appointing authority has concurred in or has directed an "in line of duty" finding, CBPO/DPMQA distributes AF Forms 348 as follows:

a. For members whose strength accountability is with the active duty force, forward the original to Headquarters Air Force Military Personnel Center, Micrographics Systems Branch (HQ AFMPC/DPMDOM1), Randolph AFB TX 78150-6001.

b. For USAFR members whose strength accountability is with the AFRES unit:

(1) Forward the original to HQ ARPC/DSMMA1, Denver CO 80280-5000, for filing in member's master personnel records group (MPerRGp) if the case involves a clearly duty-related injury not

involving misconduct occurring on an AT or during a UTA. Injuries occurring during a UTA involve injuries incurred after sign-in and before sign-out.

(2) Forward the original to HQ AFRES/DPAA, Robins AFB GA 31098-6001, for review on any case involving questionable circumstances. This includes, but is not limited to, misconduct, alcohol or drug intoxication, travel to or from UTAs, athletic events before or after UTA periods, disease incurred during UTAs, or an active duty tour of less than 30 days, and on-base injuries occurring before or after UTA periods.

(3) If the review raises a question whether the "in line of duty" finding by the appointing authority is correct, either the AFRES Commander (AFRES/CC) or the AFRES Vice Commander (AFRES/CV) may return the form to the appointing authority with directions to appoint an investigating officer to conduct a formal investigation. See the note in paragraph 2-10.

c. For ANGUS members whose strength accountability is with an ANGUS unit:

(1) Forward the original and two locally reproduced copies to the State Adjutant General of the member's home state for review.

(2) After review, the State Adjutant General sends all copies to the Air Surgeon, National Guard Bureau, for further review.

(3) After review, the Air Surgeon, National Guard Bureau, keeps one copy and returns the original and remaining copy to the State Adjutant General for disposition as follows:

(a) The copy is sent to CBPO/DPMQA for local use in administering the member's medical and pay benefits.

(b) The original is sent to HQ ARPC Master Records Management Division (DSM) on all members for filing in the members' MPerRGp.

d. For AFROTC cadets, forward the original to the cadet's detachment commander for filing in the cadet's personnel record.

e. For USAFA cadets, forward the original to HQ USAFA, Directorate of Cadet Personnel (DPY), USAF Academy CO 80840-5001.

f. For all other non-EAD USAFR members, send the original to HQ ARPC/DPMQA, Denver CO 80280-5000, for distribution to HQ ARPC Finance and Support Division (DRO) for continuation pay purposes and to HQ ARPC/DSMMA1 for filing in the member's MPerRGp.

3-12. CBPO/DPMQA Action After Completing the Informal Determinations in Cases Where Member Has Died Leaving Dependents. Where the appointing authority has concurred in or has directed an "in line of duty" finding in a death case, CBPO/DPMQA sends the original AF Form 348 to HQ AFMPC

Micrographics Systems Branch, Records Retirement Section (HQ AFMPC/DPMDOM2F), Randolph AFB TX 78150-6001, and one copy to AFAFC/AJCTC, Denver CO 80279-5000. A copy of the AF Form 348 is also forwarded to the CAR, CBPO/DPMQA. If the member's dependents resided in military family housing at the time of the member's death, a copy should be sent to the military family housing manager (DEH) at the installation where the dependents reside.

Section D—Formal Determinations

3-13. The Investigating Officer:

- a. See instructions in attachment 2.
- b. After the report of investigation is complete, send all documentation to the staff judge advocate who serves the appointing authority.

3-14. The Staff Judge Advocate:

- a. The SJA who serves the appointing authority reviews each report of investigation for legal sufficiency before submitting it for the appointing authority's action. The report may be returned for additional investigation. The review must be in writing and signed. A copy of the review must be attached to each copy of the report of investigation. The content of the review is left to the discretion of the SJA but, as a minimum, should have a summary of the facts, a discussion of the issues, and the reviewer's opinion as to the legal sufficiency of the investigation. The SJA should also give an opinion on whether or not the investigating officer's LOD and misconduct findings are correct.

- b. Following the review, send all documentation to the appointing authority.

3-15. The Appointing Authority. These actions are required when an investigation has been directed and completed, and the appointing authority has received a report of the investigation.

- a. The appointing authority reviews the report. It may be returned for additional investigation. Following the review, all copies of DD Form 261 must be filled out and signed by the appointing authority. If the appointing authority disapproves the findings of the investigating officer, the reasons for disapproval and the new findings of the appointing authority must be listed on the reverse of all copies of DD Form 261 and signed.

- b. Following action by the appointing authority, send all documentation to the reviewing authority through CBPO/DPMQA.

3-16. Identification and Delegation of the Reviewing Authority:

a. The reviewing authority is the officer who exercises general court-martial jurisdiction over the appointing authority except in the following cases:

- (1) For USAFR members whose strength accountability is with an AFRES unit—either AFRES/CC or AFRES/CV may act as the reviewing authority.

- (2) For ANGUS members whose strength accountability is with an ANGUS unit and who are serving or training in the members' home state—the State Adjutant General of the members' home state acts as reviewing authority.

- (3) For ANGUS members whose strength accountability is with an ANGUS unit and who are serving or training outside the members' home state—the Air Surgeon, National Guard Bureau, acts as reviewing authority.

- (4) For AFROTC cadets (whether in flight training or in field training)—the Commandant, AFROTC, acts as reviewing authority.

- b. For cases arising under the general court-martial jurisdiction of a major commander, authority to act as a reviewing authority may be delegated to any general officer on the major commander's staff or to the major command (MAJCOM) SJA. For cases arising under the general court-martial jurisdiction of an officer other than a major commander, authority to act as a reviewing authority may be delegated only to the general court-martial convening authority's vice commander. In no case, however, may the same officer act as both the appointing authority and as the reviewing authority (paragraph 3-7b).

3-17. Responsibilities of the Reviewing Authority:

- a. The reviewing authority has his or her staff judge advocate review the report of investigation. The report may be returned for additional investigation. The SJA prepares and attaches a written review to the file. This review need only be a statement that the staff judge advocate concurs with the written review of the appointing authority's SJA. This review can also be a second formal written review.

- b. Following the review:

- (1) All copies of the DD Form 261, Report of Investigation Line of Duty and Misconduct Status, must be filled out in the space provided for the reviewing authority. If the reviewing authority disapproves the findings approved by the appointing authority, the reasons for disapproval and the new findings must be listed on the reverse of all copies of DD Form 261 and signed.

NOTE: Approval or disapproval of findings is based on the preceding finding. For example, if the appointing authority disapproves the "in line of duty" finding

of the investigating officer, the reviewing and approving authority approves or disapproves the action of the appointing authority, not the investigating officer.

(2) If the reviewing authority also acts as the approving authority pursuant to a delegation under paragraph 3-19b, put "Reviewing authority is also the approving authority" in the blank space at the bottom of DD Form 261.

(3) In commands where the approving authority is the only officer exercising general court-martial jurisdiction and that commander acts on a case both as reviewing and as approving authority, this fact must be written in the blank space at the bottom of the front of DD Form 261.

3-18. Disposition of Documentation After Review. Following action by the reviewing authority, dispose of documentation as follows:

a. If the reviewing authority is not the approving authority, send all documentation to the approving authority.

b. If the reviewing authority is also the approving authority, return all documentation except the original DD Form 261, the original report of investigation, and the original reviews to the CBPO/DPMQA that serves the member's immediate commander. In death cases, dispose of all documentation according to paragraph 3-22. In other cases, distribute the originals as follows:

(1) For members whose strength accountability is with the active duty force—to HQ AFMPC Staff Judge Advocate (JA), Randolph AFB TX 78150-6001, for review and file in the master personnel record. HQ AFMPC/JA may return the case to the approving authority for corrective action and may submit cases to the Secretary of the Air Force Personnel Council with recommendations for changing approved determinations.

(2) For USAFR members whose strength accountability is with a USAFR unit—to HQ ARPC/DSMMA1, Denver CO 80280-5000, for filing in the member's MPerRGp.

(3) For ANGUS members whose strength accountability is with an ANGUS unit—refer to paragraph 3-21.

(4) For AFROTC cadets—to the cadet's detachment commander for filing in the cadet's personnel record.

(5) For USAFA cadets—to HQ USAFA/DPY, USAF Academy CO 80840-5001.

(6) For all other non-EAD USAFR members, the original AF Form 348 is sent to HQ ARPC/DPMQA, Denver CO 80280-5000, for distribution.

3-19. Identification and Delegation of the Approving Authority:

a. The approving authority is the commander of the MAJCOM or separate operating agency to which the reviewing authority is assigned, except in the following cases:

(1) For USAFR members whose strength accountability is with an AFRES unit—either AFRES/CC or AFRES/CV may act as the approving authority.

(2) For ANGUS members whose strength accountability is with an ANGUS unit—the Air Surgeon, National Guard Bureau, acts as approving authority in all cases.

b. Authority to act as approving authority may be delegated by a supplement to this regulation to reviewing authorities who:

(1) Exercise general court-martial jurisdiction; or

(2) Have been delegated authority to act as such under paragraph 3-16b.

3-20. Responsibilities of the Approving Authority. Take final action in the case. The report may be returned for additional investigation. Record action approving the findings of the reviewing authority in the blank space at the bottom of the front of all copies of DD Form 261. Sign all copies of the form. If the approving authority disapproves the findings of the reviewing authority, the reasons for disapproval and the new findings must be put on the reverse of all copies of DD Form 261 and signed.

3-21. Disposing of Documents. Following action by the approving authority, dispose of documentation as shown in paragraph 3-18b except in the case of ANGUS members whose strength accountability is with an ANGUS unit. For such ANGUS members, the Air Surgeon, National Guard Bureau, keeps one copy of the complete file and sends the original and the two copies to the State Adjutant General of the member's home state. The State Adjutant General:

a. Sends the two copies of the file to CBPO/DPMQA.

b. In the case of commissioned officers, sends the original of the file to ARPC for filing in the member's MPerRGp.

c. In the case of all other members, files the original of the file in the member's MPerRGp.

3-22. Disposing of Documentation in Death Cases. Following action by the approving authority, return all documentation to the CBPO/DPMQA that serves the immediate commander. Distribute the original of the DD Form 261, the original of the report of investigation, and the original of the reviews to HQ AFMPC/JA, Randolph AFB TX 78150-6001, for review and file

in the MPerRGp. A copy of the DD Form 261, the report of investigation, and the reviews are sent by the CBPO/DPMQA to AFAFC/AJCTC, Denver CO 80279-5000. A copy of the DD Form 261, the report of investigation, and the reviews are also forwarded to the CAR, CBPO/DPMAP.

3-23. CBPO/DPMQA Action After Completing the Formal Determination:

a. On receipt of the file documenting the final finding of the approving authority:

(1) Tell the Accounting and Finance office if the file shows an absence from duty for more than 1 day due to disease directly caused by and immediately following the member's intemperate use of alcohol or habit forming drugs. (See 37 U.S.C. 802, and paragraph 10315 and table 1-3-1, DODPM.)

(2) In coordination with CBPO, Personnel Readiness Center (DPMUX), make sure AF Form 2098, Duty Status Change, is prepared to show lost time if the final finding is "Not In Line of Duty." (See 10 U.S.C. 972(5).) If the lost time determination cannot be made immediately because of the member's continued hospitalization or for other good reason, keep the documentation in a suspense file until the determination can be made.

b. Following action by CBPO/DPMQA, give a copy of DD Form 261, the report of investigation, and the review or reviews to the subject of the investigation. NOTE: If the subject is an ANGUS member whose strength accountability is with an ANGUS unit, a copy is also kept for local use in administering the member's medical and pay benefits.

c. In death cases, there will be no notification except as provided in paragraph 3-22, unless the approved findings are "not in line of duty." In that event, follow these procedures:

(1) Forward a copy of the DD Form 261, the report of investigation, and the review or reviews, to the surviving next of kin, usually the surviving spouse. Because of the sensitivity of these matters, do not send copies of the report directly to surviving minor children who might be the next of kin. In these cases, forward a copy of the report to the legal guardian appointed

to represent the minors' interests. The summary court-martial appointed to settle the deceased's affairs should be contacted to obtain the guardian's name and address. Also, the local staff judge advocate may provide advice and assistance on this matter.

(2) Send the copy under cover letter to the next of kin or legal guardian. CBPO/DPMQA prepares the cover letter for signature by the base commander or his or her designee. The letter should be hand-delivered if feasible; otherwise, use certified mail and request return receipt. The letter will contain the following information:

(a) That after full investigation into the facts and circumstances surrounding the member's death, a finding of "not in line of duty" was entered.

(b) That pursuant to 37 U.S.C. 403(1), "not in line of duty" findings eliminate the surviving beneficiaries' eligibility to receive the member's quarters allowance for an additional 90 days following death. If surviving dependents reside in military family housing, notification should include a statement that "not in line of duty" findings eliminate eligibility to reside in military family housing for 90 days without cost following the member's death. Also, include a statement that surviving dependents are indebted to the US government for reimbursement of BAQ expenses for that period of time in which they resided in military family housing since the member's death.

(c) That the finding of "not in line of duty" has no effect on other benefits or entitlements that the surviving dependents may be authorized.

(d) They have the right to make written application requesting reinvestigation of the findings by the appointing authority within 7 days from the date of receipt of this letter; and

(e) That if a request for reinvestigation is made, the individual has the right to submit a statement and attach new and significant evidence not previously considered. Advise the individual to send the written application to the appointing authority.

(3) Forward a copy of the letter to the next of kin or legal guardian to the CAR, CBPO/DPMAP and the military family housing manager (DEH) at the installation where the dependents reside.

TABLE 3-1

MEDICAL FACILITY REQUIREMENTS FOR ADMINISTRATIVE DETERMINATIONS

R U L E	A	B	C	D
	If the disease, injury, or death is (see note 1)	then the medical facility or medical officer		
		makes an "in line of duty" entry in the member's medical record	makes an "EPTS, LOD, Not Applicable" entry in member's medical record	Initiates AF Form 348
1	the result of battle casualty or "hostile action" (see para 2-1 and 2-8a)	X		
2	an injury or death as a passenger in a common carrier or military aircraft (see para 2-8c (4))			
3	a disease of natural origin not involving misconduct and not caused by drug or alcohol abuse			
4	a simple injury (sprain, contusion, or minor fracture) not likely to result in a permanent disability (see para 2-8c(2))	X (see note 2)		
5	EPTS and not aggravated by service (see para 2-3 and 2-8b)		X	
6	any other illness or injury			X (see note 3)

NOTES:

1. LOD findings are only entered in certain death cases. Refer to paragraphs 1-5a and 3-4a and b for explanation.
2. This entry may be made only if there is no likelihood of permanent disability and only if the injury was not due to the member's

- own misconduct, was not incurred while the member was absent without authority, and none of the conditions in paragraph 1-20 apply.
3. Refer to attachment 1 for instructions on how to fill out AF Form 348. Refer to paragraph 3-3(c) for disposition instructions.

TABLE 3-2

DOCUMENT FLOW AND TIME STANDARDS FOR INFORMAL LOD AND MISCONDUCT DETERMINATIONS

STEP	A	B	C	D	E	F
	Action agency	Identified in paragraph	Takes action required by paragraph	Distributes per paragraph	With action (except in death cases) completed within (see note 1)	With action in death cases completed within (see note 1)
1	Air Force medical facility or officer	3-2	3-5b and table 3-1 rule 6	3-3c	4 workdays	2 workdays
2	CBPO/DPMQA	3-5	3-5a, b, d	3-5	2 workdays	1 workday
3	Immediate commander	3-6a	3-6b(1), (2)	3-6b(3)	4 workdays	2 workdays
4	Staff judge advocate (see note 2)	3-6b(3)	3-8	3-6b(3), 3-8	2 workdays	1 workday
5	Appointing authority	3-7a	3-9a, b (see note 3)	3-9	3 workdays	
6	CBPO/DPMQA	3-5	NA	3-11	1 workday	

NOTES:

1. These time standards don't apply to USAFR member determinations being processed through USAFR channels. However, USAFR action agencies will complete the actions indicated in the table as soon as possible (ASAP).

2. This step is to be omitted in the processing of USAFR member determinations through USAFR channels. See paragraph 3-6(3).

3. If investigating officer is to be appointed, go to table 3-3, step 1.

TABLE 3-3

DOCUMENT FLOW AND TIME STANDARDS FOR FORMAL LOD AND MISCONDUCT DETERMINATIONS

STEP	A	B	C	D	E	F
	Action agency	Identified in paragraph	Takes action required by paragraph	Distributes per paragraph	With action (except in death cases) completed within (see note 1)	With action in death cases completed within (see note 1)
1	Appointing authority	3-7	3-9a and c (see note 2)	3-9(2)	3 workdays	2 workdays
2	Investigating officer	3-9c(1), 3-10	3-13, atch 2	3-13b	14 workdays	7 workdays
3	Staff judge advocate	3-14	3-14	3-14b	5 workdays	2 workdays
4	Appointing authority	3-7a	3-15a	3-15b		ASAP
5	Reviewing authority	3-16a	3-17	3-18		
6	Approving authority	3-19a	3-20	3-21		
7	CBPO/DPMQA	3-5	3-23	3-23b	ASAP	

NOTES:

1. These time standards don't apply to USAFR member determinations being processed through USAFR channels. However, USAFR action agencies will complete the actions indicated in the table

ASAP.

2. If final finding directed by the appointing authority was "in line of duty," go to table 3-2, step 5.

Chapter 4

REINVESTIGATION OF FINAL FINDINGS

4-1. Proceedings on Reinvestigation. Final findings are subject to reinvestigation at the request of the member or at the direction of the appointing authority or higher authority, including HQ AFMPC/JA.

4-2. Reinvestigation at the Request of the Member:

a. A member who is the subject of a final LOD and misconduct determination may ask for reinvestigation by:

(1) Making written application to the appointing authority who directed the first investigation within 45 calendar days after the member gets a copy of the formal determination; and

(2) Attaching new and significant evidence not previously considered, plus the member's copy of the formal report of investigation; and

(3) Sending a copy of only the written application to the office named in paragraph 3-18b as being the final custodian of the original investigation for filing with that original, pending resolution of the request.

b. The approving authority is the only official who has authority to deny a member's request for reinvestigation:

c. Action taken on the request for reinvestigation:

(1) When the appointing authority gets a request for reinvestigation, he or she may either grant or refuse the request. If the request is refused, the appointing authority sends it to the reviewing authority with reasons for the refusal. The reviewing authority may either grant or refuse the request. If the request is refused, the reviewing authority sends it to the approving authority with reasons for the refusal. The approving authority, or the reviewing authority who has authority to act as approving authority, either grants or denies the request. If the request is denied, the approving authority returns the documentation to the member with copies of the actions taken by the appointing and reviewing authorities. The approving authority advises the member in writing why the request was denied and tells him or her of the remedy provided by AFR 31-3. Copies of the evidence submitted by the member and the originals of the actions taken by the appointing, reviewing, and approving authorities are sent to the office named in paragraph 3-18b. That office is the final custodian for filing of the original investigation.

(2) If the request for reinvestigation is granted by any of the authorities, the appointing authority directs or is instructed to direct the investigation be reopened.

4-3. Reinvestigation of Death Cases:

a. Dependents of deceased military personnel not qualifying for benefits under 37 U.S.C. 403(1) due to an adverse LOD and misconduct determination may request a reinvestigation. (See paragraph 1-5a for explanation.) Usually, the requestor is the surviving spouse. Where the surviving dependent is a minor child or children, or an adult adjudged incompetent to manage his or her own affairs, the legal guardian appointed to represent that person's interests may submit a request for reinvestigation in the minor's or incompetent's behalf. (Refer to paragraph 3-23c for the method to notify surviving dependents of "not in line of duty" findings.)

b. The procedures in paragraph 4-2a will also apply for submitting a request for reinvestigation of death cases. Guardians submitting a request for reinvestigation on behalf of a minor or incompetent must submit, with written application, evidence showing that they have been duly appointed as that person's guardian. The staff judge advocate should be consulted by the appointing authority to answer questions and review documentation establishing guardianship.

c. The approving authority is the only official who has the authority to deny a request for reinvestigation. Action taken on the request for reinvestigation is processed according to paragraph 4-2c.

4-4. Reinvestigation at the Direction of the Air Force. When new or significant evidence shows the chance of an error in a final LOD and misconduct determination, if adverse to the member or not, the appointing or higher authority, including HQ AFMPC/JA, may direct a reinvestigation. In this case, the appointing authority directs the investigation be reopened either on his or her own initiative or as a result of being instructed to do so.

4-5. Procedures for Reinvestigation:

a. The appointing authority gets the original report of investigation from the office named in paragraph 3-18b, gives all documentation to the investigating officer, and directs reopening of the case. If necessary, a new investigating officer may be appointed. The appointing authority also advises HQ AFMPC Disability Retirements Branch (DPMARD) that the case is being reinvestigated.

b. The case is investigated and processed in the same way as shown in paragraphs 3-13 through 3-20. Actions of the appointing, reviewing, and approving authorities are recorded on letterhead stationery. After

taking the final action on reinvestigation, the approving authority disposes of documentation as shown in paragraph 3-18b.

c. Action by CBPO/DPMQA on the report of reinvestigation:

(1) Where the final action on the reinvestigation is to reaffirm the first finding, CBPO/DPMQA disposes of documentation as shown in paragraph 3-23b.

(2) Where the final action on the reinvestigation is to change a prior "in line of duty" finding to one that is adverse to the member, CBPO/DPMQA acts

as required by paragraph 3-23. In addition, the member is advised of the remedy provided by AFR 31-3.

(3) Where the final action on the reinvestigation is to change an adverse finding to an "in line of duty" finding, CBPO/DPMQA makes sure previous record entries made on the basis of the adverse determination are corrected and gives a copy of the complete file to the member.

NOTE: If the member is an ANGUS member whose strength accountability is with an ANGUS unit, a copy of the reinvestigation is also kept for local use in administering medical and pay benefits.

Chapter 5

LOD AND MISCONDUCT DETERMINATIONS FOR VARIOUS SITUATIONS

5-1. Fights. Aggression or voluntary participation in a fight or similar encounter, where a member is at least equally at fault with the adversary in starting or continuing the altercation, is evidence of misconduct. Provocative actions or language taken or uttered under circumstances where a reasonable person would anticipate retaliation is also evidence of misconduct. Of course, if a member is a victim of an unprovoked assault or the member was acting in self-defense, then there is no misconduct. Where a fight is underway and an adversary uses an excessive means that could not reasonably have been foreseen under the circumstances, an injury or death resulting from the excessive means may not necessarily have been proximately caused by the misconduct of engaging in the affray in the first place. On the other hand, there may well be a causal connection between the misconduct and the injury or death where a member persists in a fight or other encounter after knowing that an adversary has produced a dangerous weapon. Each case must be determined on its own facts.

5-2. Alcohol Abuse:

a. Under 10 U.S.C. 972(5), a member may accrue lost time because of inability to do military duties for more than 24 hours as a result of intemperate use of alcohol whether or not there is a resulting disease or injury. Under this regulation, however, an LOD and misconduct determination is required only when the member has a disease or injury. Alcohol abuse of any kind is not itself considered to be either a disease or an injury for the purpose of requiring an LOD and misconduct determination (AFRs 30-2 and 160-43). No LOD and misconduct determination is required by this regulation when a condition relating to alcohol abuse is treated, unless the abuse results in some identifiable disease or injury.

b. Diseases secondary to alcohol abuse often exist. They may be those diseases that are organic and chronic (Laennec's cirrhosis, fatty metamorphosis of the liver, chronic brain syndrome) or they may be acute and transient (severe, sharp but short, passing quickly). An LOD and misconduct determination is required when, as a result of such a disease, the member is unable to do his or her duty for more than 24 hours or there is the likelihood of a permanent disability. In general, a disease that is secondary to alcohol abuse and which is organic and chronic is not considered as having been incurred as a result of the member's own misconduct. On the other hand, such a secondary

disease that is acute and transient and which is directly caused by and immediately follows alcohol abuse may be considered as having been incurred as a result of the member's own misconduct.

c. The death of a member, leaving surviving dependents, whose death is caused by alcohol abuse, or an injury that results in a member's inability to do his or her duties for more than 24 hours, or results in the likelihood of a permanent disability, also requires an LOD and misconduct determination.

d. In determinations to be made under b or c above, the ultimate determination is whether the disease, injury, or death was or was not proximately caused by the member's misconduct.

5-3. Drug Abuse:

a. Under 10 U.S.C. 972(5), a member may accrue lost time because of inability to do military duty for more than 24 hours as a result of drug abuse whether or not there is a resulting disease or injury. Under this regulation, however, an LOD and misconduct determination is required only when the member has a disease or injury or dies leaving surviving dependents. Drug abuse not resulting in treatment is not itself considered to be a disease or an injury for the purpose of requiring an LOD and misconduct determination (AFR 30-2). No LOD and misconduct determination is required by this regulation unless a condition relating to drug abuse results in some identifiable disease or results in an injury or in the death of a member leaving surviving dependents.

b. Drug abuse is strong evidence of misconduct. Disease, injury, or death proximately resulting from drug abuse may be considered the result of misconduct. This includes the debilitating effect the drug has on the body and the effect the drug may have in impairing the member's mental or physical faculties affecting his or her actions. The fact that the member may have a preexisting physical condition causing him or her to be more susceptible to the effects of the drug does not, of itself, excuse any resulting misconduct. A disease, injury, or death resulting from drug abuse may be found to be due to misconduct even though the drug abuse was made known as a result of the limited privilege communication program (AFR 30-2), identification through urinalysis, or incident to medical care for other than drug abuse.

c. In determinations to be made under b above, the ultimate determination is whether the disease, injury, or death was or was not proximately caused by the member's misconduct.

5-4. Explosives, Firearms, and Dangerous Substances. Unexploded ammunition or other objects, firearms, and highly flammable liquids are inherently dangerous and their handling necessitates a high degree of care. Tampering with, attempting to ignite, or otherwise handling such objects in disregard of their dangerous qualities is strong evidence of misconduct.

5-5. Extended Treatment for Secondary Conditions:

a. Sometimes a member may be treated for a disease or injury that, in and of itself, would not make the member unable to perform military duty for more than 24 hours. Because of the circumstances of the case, however, the member is further treated or observed for a condition other than the one originally treated that does cause an inability to perform military duty for more than 24 hours. The condition may itself be a disease or injury, or it may manifest itself as a mental condition or as incapacitation resulting from immoderate use of drugs or alcohol requiring a lost time determination (10 U.S.C. 972). To protect the interests of the member and the Air Force, the issues must be clearly identified to reach a proper determination in cases of this nature.

b. For example, a member is treated for a superficial self-inflicted injury that in and of itself is insufficient to require hospitalization for more than 24 hours. However, the member remains hospitalized for observation of his or her mental condition and the total period of hospitalization is in excess of 24 hours. Under such circumstances, no LOD and misconduct determination is needed for the injury itself. However, an LOD and misconduct determination must be made to decide if the reason for the extended hospitalization (for example, observation of the member's mental status) was due to the member's own misconduct (for example, drug abuse) or was due to a condition that existed prior to service (EPTS).

c. Frequently, the member's misconduct necessitating initial hospitalization is unrelated to the condition requiring hospitalization in excess of 24 hours. For example, a member's mental state may have developed some time before the suicidal gestures took place. Under such circumstances, findings of in line of duty or EPTS may be appropriate. Often, such findings can be made by an administrative determination.

5-6. Joint Ventures; Imputed Misconduct. The misconduct of another may be imputed to a member if the member exercises control over and is responsible for the conduct of the principal actor, or if the circumstances set up a concert of action sufficient to establish a joint enterprise. Mere presence of the

member is not sufficient to establish a joint enterprise or to give a basis for imputing to the member the misconduct of another, even if by speaking up the member may have exercised some influence over the circumstances. Each case in this category must be examined in the light of its own circumstances.

5-7. Motor Vehicle Accidents:

a. Injury or death of a member leaving surviving dependents resulting from driving a motor vehicle when unfit to do so and the member knows or should reasonably know of his or her unfitness, is strong evidence of misconduct. Unfitness to drive may be caused by voluntary intoxication, use of drugs, or other circumstances that affect the member's mental or physical faculties. A member involved in a motor vehicle accident caused by his or her falling asleep while driving, is not, solely by virtue thereof, chargeable with misconduct. The test is whether a reasonable person, under the circumstances and conditions similar to those under which the member is driving, would or would not have undertaken to do so and whether, having elected to drive, the member's choice amounted to intentional misconduct or willful neglect. Of course, a member who is otherwise fit to drive may, despite such fitness, actually operate the motor vehicle in such an intentional or negligent manner as to be chargeable with misconduct.

b. Many local safety laws and directives require the installation and use of safety devices such as seat belts and safety helmets. Injury or death incurred while not wearing safety devices such as seat belts or safety helmets is but one factor to be considered in LOD and misconduct determinations. Standing alone, the violation of a safety standard or regulation constitutes only simple negligence. The violation must under the attendant circumstances amount to gross, willful, or wanton carelessness to constitute misconduct. The failure to use safety devices may have nothing to do with the proximate cause of the injury or death. For example, the failure to wear a safety helmet probably has nothing to do with a motorcyclist who breaks his or her legs. In other cases, the extent of the member's injuries will be aggravated by his or her failure to use safety devices, but it will not be the proximate cause of the injuries or death. Careful examination of the facts and circumstances of each case is required rather than focusing solely upon whether or not the member was wearing seat belts or other protective devices at the time of the accident.

5-8. Participation in Inherently Hazardous Off-Duty Activities. The LOD and misconduct status of a member incurring a disease or injury or who dies leaving surviving dependents while participating in

inherently hazardous off-duty activities is determined in the same way as any other case under the rules set out in this regulation. In determining whether a disease, injury, or death incurred while engaged in such activities was the result of the member's misconduct, the nature of the activity, its inherent hazards, and the prior training and experience of the member should be considered.

5-9. Pregnancy. No LOD and misconduct determination is required for pregnancy or for any diagnosis associated with pregnancy. If there has been an induced abortion in violation of the law of the place where the abortion was done, an LOD and misconduct determination is required if the member is unable to do her duties for more than 24 hours; or there is the likelihood of a permanent disability, or results in death.

5-10. Refusal of or Failure To Seek Medical or Dental Treatment. If a member unreasonably refuses or fails through willful neglect or by design to submit to medical, surgical, or dental treatment, any disease, injury, or death that proximately results from such refusal or failure may be deemed to have been incurred as a result of the member's own misconduct even though the condition for which the member failed to get or seek treatment did not result from misconduct.

5-11. Residual Effects of Surgery or Treatment. If surgery or treatment is required and provided by an authorized person for a disease or injury that was incurred "not in line of duty" whether or not due to misconduct, then the normally expected disability resulting from the surgery or treatment is likewise "not in line of duty." However, if there are unanticipated residuals from the surgery or treatment, these may under proper circumstances be found as having been incurred "in line of duty."

5-12. Resisting Arrest; Escape From Custody. One who resists arrest or who tries to escape from custody should reasonably anticipate that necessary force, even force that may be excessive under the circumstances, will be used to restrain him or her. One who engages in such activities may be considered to be acting in

disregard of personal safety, and any injury or death suffered as a consequence may be deemed to have occurred as a result of the member's own misconduct.

5-13. Suicide Attempts and Suicide of Members Leaving Surviving Dependents:

a. In view of the human instinct for self-preservation, suicide or a bona fide suicide attempt gives rise to a strong inference of lack of mental responsibility. A bona fide suicide attempt is sufficient evidence to rebut the presumption that the member was mentally responsible. In such cases, evidence must be sought on the question of mental responsibility including expert psychiatric evaluation. All possible evidence bearing on the suicide or suicide attempt should be considered. This includes evidence on the person's social background, his or her actions immediately before the suicide or suicide attempt, and any problems that might have motivated the incident.

b. Intentionally self-inflicted injury or disease, not prompted by a bona fide suicide attempt, is at most a suicidal gesture. Such disease or injury, unless lack of mental responsibility is otherwise shown, may well have been incurred as a result of the member's own misconduct. Where the suicide attempt or suicidal gesture occurred while the member was absent without authority, mental responsibility at the beginning of the absence without authority must be determined in addition to mental responsibility at the time of the suicide attempt.

5-14. Venereal Disease. Such diseases are not ordinarily considered to have been incurred as a result of the member's misconduct, unless the member has failed to comply with regulations requiring him or her to report for and receive treatment.

5-15. Disposition of Pending Cases. Cases in progress before this regulation is received and in which an AF Form 348 has been prepared will be processed to completion according to the superseded regulation. Cases involving death of members with surviving dependents, who die on or after 12 December 1985 (the effective date of 37 U.S.C. 403(1)) but before the effective date of this regulation, will be forwarded to AFAFC/JA, Denver CO 80279-5000, for processing.

BY ORDER OF THE SECRETARY OF THE AIR FORCE

OFFICIAL

WILLIAM O. NATIONS, Colonel, USAF
Director of Information Management
and Administration

LARRY D. WELCH, General, USAF
Chief of Staff

SUMMARY OF CHANGES

This revision establishes requirement for LOD and misconduct procedures for members of the USAFR and ANGUS who incur or aggravate an injury, illness, or disease while on active duty, while performing active duty for training for any period of time, or while on inactive duty training as authorized by 10 U.S.C. 1074a (para 1-2b); establishes requirement for LOD and misconduct determinations following the death of active duty members leaving surviving dependents who qualify for housing benefits according to 37 U.S.C. 403(l) (para 1-5); provides an explanation of the type of evidence that may be considered in making LOD and misconduct determinations (para 2-2); establishes procedures for processing LOD and misconduct determinations in death cases (para 3-4 and 3-23c); establishes expedited processing times for completing LODs in death cases (table 3-2 and table 3-3, col f); develops procedures for reinvestigation requests in death cases (para 4-3); clarifies necessity for LOD and misconduct determinations following treatment for secondary conditions (para 5-5); and explains the consequences on a LOD and misconduct determination for the failure to wear seat belts or safety helmets (para 5-7b).

**INSTRUCTIONS FOR COMPLETING AF FORM 348,
LINE OF DUTY DETERMINATION**

NOTE: Medical facility will prepare three copies of AF Form 348.

A1-1. Items 1 Through 14 — Medical Facility (Front). All items must be completed.

a. Enter organization and location of member's immediate commander in the "TO" block. See paragraph 3-6 to identify the immediate commander.

b. Enter the location of the CBPO/DPMQA in the "THRU" block. See paragraph 3-5 to identify the CBPO/DPMQA.

c. Enter organization and location of the medical facility preparing the form in the "FROM" block.

d. If member is RegAF, AFROTC cadet, or USAFA cadet, check the appropriate block in item 5A. If member is ANGUS, check the appropriate block in item 5B telling who has strength accountability. If member is USAFR, check the appropriate block in item 5C telling who has strength accountability. Then, if strength accountability is with the USAFR, check the appropriate block in item 5D telling whether the member is assigned to an active duty unit for training or not.

e. Check the appropriate block of item 6 and give details. If the cause of the injury resulted in death of a member leaving surviving dependents, none of the blocks should be checked. However, the word "death" should be written in item 6 along with a short description of the cause of death.

f. Item 9. You may have to check one, two, or all three blocks depending on the circumstances of the case. However, if *none* of these blocks can be checked, no LOD and misconduct determination is required.

g. Items 10 and 11. If the member was first seen by a civilian physician or by a medical officer of another armed force, get the necessary information from the civilian physician's records or from the records of the medical facility of the armed force where treatment was first provided.

h. Item 12. Give as complete a description of the alleged circumstances as the available information permits. In the case of death of a member leaving surviving dependents, the medical officer will provide the presumptive medical cause of death.

i. Item 13. It is not necessary to give "names and addresses" if the source of the information is the member or the police.

j. Item 14. Check *either* 14A or 14B.

k. The Air Force medical officer who provided the treatment, or the hospital or facility commander must sign the form.

NOTE: At some remote locations only a medical

technician is in attendance at the Air Force unit. The technician may sign the medical officer's part of the form in such circumstances but must note below his or her signature that no medical officer is assigned to the remote location.

A1-2. Items 15 Through 20 — Immediate Commander (Reverse). Complete all items.

a. Enter organization and location of the appointing authority in the "TO" block. See paragraph 3-7 to identify the appointing authority.

b. Enter organization and location of immediate commander in the "FROM" block.

c. Item 15. This item pertains to the actual duty status of the member at the time the disease or injury was incurred. A member who is performing duty or who is on the installation in an off-duty status is "present for duty." A member who is away from the installation and not performing assigned duty is either "absent with authority" (authority to be absent may be written, oral, or implied); is "absent without authority" as the term is defined in paragraph 1-6; or the circumstances of the case are such that the member fits one of those special situations set out in paragraph 1-20. Usually, the special situations apply only to USAFR and ANGUS members. Where a member was first treated at his or her home base but was transferred either as a hospital patient or otherwise, before an AF Form 348 was started, the member's new immediate commander may have to consult with the member's former organization to find out what the member's duty status was when the disease or injury was incurred.

d. Item 16. Record completely and concisely the circumstances surrounding the disease, injury, or death, based on the immediate commander's informal investigation. **DO NOT SAY "SEE ITEM 12."** Item 16 should include the names and addresses of civilians involved in the same incident, if any. If more space is required, use plain bond paper and identify item 16 as being continued. For USAFR and ANGUS members include the type of tour and the inclusive tour dates.

e. Item 17. Check appropriate block. If the proximate cause was something other than the intentional misconduct or willful neglect of the member, check "neither of these" and specify the proximate cause. Refer to chapter 1, section B, for explanation of terms.

f. Item 18. It is not necessary to give "names and addresses" if the source of the information is the member or the police, nor is it necessary to repeat names and addresses already appearing in item 13.

g. Complete *either* item 19 or item 20.

(1) Item 19 is checked only if:

(a) The commander finds that the member was not absent without authority when the disease, injury, or death was incurred, and

(b) The commander finds that none of the special situations in paragraph 1-20 apply, and

(c) The commander finds that the disease, injury, or death was not proximately caused by the

member's own misconduct.

(2) Item 20 is checked in all cases where item 19 cannot be checked.

h. The member's immediate commander must sign the AF Form 348.

A1-3. Item 21 — Appointing Authority (Reverse). Refer to paragraph 3-9.

GUIDE FOR INVESTIGATING OFFICERS
(including instructions for preparing DD Form 261)

A2-1. Purpose. The purpose of an LOD and misconduct investigation is to protect the interests of the member being investigated and to make sure government benefits are awarded with justice and according to law. It is primarily a fact-finding process. If the investigation is thorough and the facts are assembled with care, the report of investigation includes all information needed to evaluate disability claims and other issues related to the disease, injury, or death of a member leaving surviving dependents that may arise immediately or those that may arise many years later. The LOD and misconduct investigation is separate and distinct from judicial processes or other disciplinary action. An adverse finding is not used as a vehicle for imposing punishment or as a means of setting an example for a command.

A2-2. Preliminary:

a. The investigating officer (IO) is provided the original of the AF Form 348 and copies of the appointing orders. Usually, these documents have sufficient data to give the IO an insight into the general area to be investigated.

b. The IO is also given a copy of this regulation. Read it and pay particular attention to those parts that may have specific application to the matter to be investigated.

c. Consult with SJA before beginning the investigation. Thereafter, the SJA should be consulted at any time it is felt that legal advice would ensure a quality report of investigation.

d. If a member dies leaving surviving dependents, contact the CBPO/DPMQA to determine if a report of facts and circumstances of death was completed according to AFR 30-25, Casualty Services. A copy of the completed report should be reviewed. The IO should contact the reporting officer assigned to complete the report of facts and circumstances if that investigation is underway. The report of facts and circumstances is an appropriate starting point for the IO's investigation. However, the IO should consider that the report of facts and circumstances was not conducted for LOD purposes. Therefore, extreme care should be exercised before incorporating statements or conclusions from the facts and circumstances report because the IO is responsible for an independent LOD and misconduct determination.

A2-3. The Course of the Investigation:

a. Determining duty status:

(1) Generally:

(a) A disease, injury, or death of a member

leaving surviving dependents incurred while a member is absent without authority, must be found to have been incurred "not in line of duty" whether the disease or injury was or was not the result of the member's misconduct.

(b) For the definition of the term "absent without authority," see paragraph 1-6.

(c) Unless there is evidence to the contrary, the IO may rely on the immediate commander's finding (AF Form 348, item 15A or 15B) that the member was "present for duty" or was "absent with authority."

(d) Where the immediate commander has found (AF Form 348, item 15C or 15D) that the member was "absent without authority," or where there is evidence to indicate the commander was incorrect in finding the member was "present for duty" or was "absent with authority," the IO must inquire further into the facts and circumstances of the member's duty status. The report of investigation must fully document the basis for the finding to be finally recorded on DD Form 261.

(e) When the immediate commander has indicated (AF Form 348, item 15E) that one of the special situations in paragraph 1-20 is applicable, the IO must inquire further into the relationship between the incurrence of the member's disease, injury, or death leaving surviving dependents, and his or her duty status. In fact, it would not be unusual in this special kind of case for this relationship to be the only issue to be resolved by the investigation. Again, the report must fully document the basis for the finding to be finally recorded on DD Form 261.

(f) Documentation in these instances may be in the form of orders, records of duty status changes, incident reports, statements of witnesses, or other evidence that supports the final finding made by the IO.

(2) For members who incur a disease or injury or who die leaving surviving dependents while traveling to or from duty or training:

(a) The IO must document the member's status in relation to the duty or training undertaken. Copies of relevant orders are essential.

(b) When the disease, injury, or death is incurred while the member is traveling to or from duty or training, the IO should document the hour at which the member was scheduled to start duty or training, or the hour at which the duty or training was completed, the method of travel used, the shortest route between the place of duty or training, and the place where the member commenced travel to start duty or the place where the member was returning after completing duty or training, as shown by maps or diagrams. The IO should also document the time and place

the disease, injury, or death occurred and any other facts relevant to the question of whether the member, at the time the disease, injury, or death was incurred, was on the "authorized" route to or from duty or training at a time when he or she would have been normally expected to be traveling.

b. Determining whether misconduct was or was not the proximate cause of the member's disease, injury, or death.

(1) For explanations of the terms "misconduct" and "proximate cause," see paragraphs 1-18 and 1-21.

(2) To do this, the IO should get the facts by:

(a) Interviewing witnesses, including the member.

(b) Getting copies of military police reports; extracts or summaries of Office of Special Investigations (OSI) reports; hospitalization or clinical records; blood, breath, urine, or tissue tests; and photographs.

(c) Getting copies of civilian police reports, if any. Generally, civilian police reports involving traffic investigations are made available to the IO by the civilian agency involved. In some states, civilian police reports involving criminal investigations cannot be made available directly to the IO. In any case where the IO has difficulty in securing civilian police reports, he or she should contact the local OSI for help in getting copies of these reports or an extract or summary of them.

(d) Preparing maps, charts, diagrams, or other exhibits that might be helpful to an understanding of the incident.

(e) Securing evidence regarding the mental responsibility of the member.

1. Get a copy of the psychiatric evaluation to include in the investigative file, if such evaluation has already been done. If there has been no psychiatric evaluation and one is necessary, ask the member's commander or the appointing authority to request one and get a copy for the file.

2. In cases of possible suicide, where the deceased has surviving dependents, collect all possible evidence bearing on the mental condition of the deceased. This includes evidence on deceased's actions or moods immediately before the suicide, any problems that might have motivated the act, and any mental health examinations that may have been completed before death.

(f) Obtaining the report of autopsy findings in death cases. This includes blood alcohol results and toxicology studies. AFM 160-19 and AFR 168-4 prescribe the circumstances under which an autopsy is performed on a member of the Air Force.

(g) Covering any other matters deemed relevant.

A2-4. Witnesses. The IO should interview all witnesses who have knowledge of the matter under investigation. This includes those listed on AF Form 348 and any others about whom the IO knows or may learn. The subject of the investigation must be interviewed in all cases except where precluded by medical necessity. If witnesses, other than the subject are not available for personal interview, the IO should get copies of available sworn or unsworn statements, if any, made by those witnesses to other investigators. If no such statements are available, the IO should, where feasible, arrange for statements to be obtained by others.

a. Advising witnesses other than the subject of the investigation before interrogation:

(1) **Civilian Witnesses.** No particular advice is required. For suggested format of written statement, see figure A2-1.

(2) **Military Witnesses:**

(a) Those not suspected of having committed any offense, no particular advice is required. For suggested format of written statement, see figure A2-2.

(b) Those suspected of having committed an offense, advise the witness of his or her rights under Article 31: Uniform Code of Military Justice (UCMJ). Consult with the SJA on the form of the advice. For suggested format of written statement, see figure A2-2.

b. Advising the subject of the investigation before interrogation:

(1) In all cases, the member must be advised pursuant to 10 U.S.C. 1219 which states: "A member of an armed force may not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that he has. Any such statement against (his) (her) interests, signed by a member, is invalid."

(2) The member must also be advised of his or her rights under Article 31: UCMJ, if he or she is suspected of having committed an offense. Consult with the SJA on the form of the advice.

(3) For suggested format of written statement, see figure A2-3.

c. If the member under investigation has been transferred from the place where the investigation is being held, the IO requests that the member's new commander or, if applicable, the hospital commander where the member is hospitalized, get a statement and forward it to the IO for inclusion in the report of investigation. The preliminary advice to the member required by this regulation must be given without regard to who gets the statement.

d. In any event, the report of investigation must contain the sworn statement of the subject of the investigation or an explanation of the efforts made to get it and the reasons why it could not be obtained.

e. If a witness, including the subject, has been interviewed, and, after having been properly advised of his or her rights, has provided relevant information but then declines to or cannot sign a written statement, the IO prepares a written summary of the information provided orally. Include the summary in the investigative file along with an explanation of the reason for it.

f. All witnesses asked to supply personal information in an LOD investigation must be advised according to the Privacy Act (5 U.S.C. 552a(c)(3)). The sample formats for witnesses' statements (figures A2-1, A2-2, and A2-3) contain appropriate Privacy Act advice. Include the Privacy Act statement on the form used to collect all witnesses' statements.

A2-5. The Report of Investigation:

a. Consists of DD Form 261 as a cover sheet and forwarding document, an index of exhibits, a summary prepared by the IO, and the documents collected by the IO during the course of the investigation. It is assembled as provided below. If necessary typing and administrative support is not readily available, ask the appointing authority to arrange for it.

b. The filming processes employed by some record custodians require all documents in the report to be of good quality. Original documents should be in the report if at all possible. If originals are not available, reproduction should be on bond paper. Carbon copies are acceptable but they must be of such quality to reproduce clearly.

c. The investigating officer's summary is a narrative report prepared by the IO at the conclusion of the investigation. It includes a statement of the authority under which the investigation was conducted, identification of any duty time lost, the matters investigated, the facts, a discussion of those facts as they relate to the issues under investigation, the conclusions of the IO, and a statement of findings.

d. DD Form 261 and the report of investigation are filled out in two copies (three copies are filled out when the subject is an AFRES member whose strength accountability is with an AFRES unit and four copies are filled out when the subject is an ANGUS member whose strength accountability is with an ANGUS unit) and are assembled as follows:

- (1) DD Form 261 as the cover sheet.
- (2) Tab A — Index of exhibits.
- (3) Tab B — Summary of the IO.
- (4) Tab C — Copy of the IO's appointing orders.
- (5) Tab D — Copy of AF Form 348.
- (6) Tab E — Sworn statement of the subject of

the investigation, or the certificate of the IO describing the attempts made to get such a statement and stating the reasons why it could not be obtained.

(7) Tab F — Statements of witnesses. If the report of investigation indicates that there is a witness who has relevant and important knowledge of the incident being investigated but a statement from that witness or a summary of the witness' oral testimony is not included in the report, the IO should include under this tab an explanation of why such statement or summary is not in the file.

(8) Tab G — Copies of official orders or other documents; for example, Reserve orders to active duty for training or inactive duty training; or copies of AF Form 2098 showing AWOL status.

(9) Tab H — Copies of other investigative reports prepared by military or civilian authorities.

(10) Tab I — Maps, photographs, or sketches.

(11) Tab J — Medical records, but only those relevant to determining LOD and misconduct status. This includes reports of autopsy findings. For example, SF 502, Medical Record—Narrative Summary; psychiatric evaluation; or results of blood alcohol tests. NOTE: The IO may add tabs K, L, M, etc., if the report includes data not covered by another tab. Where more than one exhibit appears under a given tab, label the exhibits separately; for example, F-1, F-2, and F-3. Where there are no exhibits to include behind a given tab, the tab letter should nevertheless appear in the index with the notation "No exhibits, this tab."

A2-6. Preparing DD Form 261. This form is the cover sheet for, and is attached to the front of, each copy of the report of investigation. Complete the items as follows:

- a. Item 1, self-explanatory.
- b. Item 2, enter the organization and address of the *appointing authority*.
- c. Item 3, check applicable blocks.
- d. Item 4 through 9f, self-explanatory.
- e. Item 9g, enter a brief summary of the circumstances of the incident as determined by the investigation. Limit comments to the space provided.
- f. Item 10, enter the finding deemed appropriate as a result of the investigation. (See paragraphs 1-15, 1-19, and 1-20.)
- g. Date and sign all copies of the form in the space provided for the IO.

A2-7. Forwarding Documentation. Send all documentation to the staff judge advocate serving the appointing authority for legal review.

STATEMENT (see note 2)

I, _____ (name) _____ (address) _____, have been advised of the purpose of this investigation and of the importance of a correct and complete statement of the facts as known to me. I understand the foregoing and voluntarily make the following sworn statement:

(body of statement)

(signature of witness)

Subscribed and sworn to before me this _____ day of _____, 19 _____.

(signature of person administering the oath (see note 1))

AUTHORITY: 5 U.S.C. 2108, 3309-3315, and 8140; 10 U.S.C. 507, 972, 1074, 1201-1221; 32 U.S.C. 318, 319; 37 U.S.C. 204, 403, 802; 38 U.S.C. 310, 331, 610, and 612; and EO 9397.

PURPOSE: Information provided is used by processing activities in determining whether the diseased, injured, or deceased member was or was not acting in line of duty when the disease, injury, or death occurred. The information will be filed in the member's master personnel record group and the member, if alive, or the surviving next of kin will receive a copy as well. Information may be reviewed by the base ground safety office.

ROUTINE USES: NONE.

DISCLOSURE IS VOLUNTARY: If information is not provided, the Air Force will complete processing using information that is available.

NOTES:

1. The investigating officer, any other person authorized by 10 U.S.C. 936, or a notary public, may administer the oath. The typed or printed name, grade, and organization or, if a notary, the notary's iden-

tification will be entered under the signature block.

2. Include the Privacy Act statement on the form used to collect the witness statement.

Figure A2-1. Sample Format for Statement of a Civilian Witness.

STATEMENT (see note 4)

I, _____ (name) _____ (grade) _____ (organization) _____, have been advised (of my rights under Article 31: UCMJ (see note 1)) of the purpose of this investigation, and of the importance of a correct and complete statement of the facts as known to me (see note 2). I understand the foregoing and make the following sworn statement:

(body of statement)

(signature of witness, SSN)

Subscribed and sworn to before me this _____ day of _____, 19 _____.

(signature of person administering the oath (see note 3))

AUTHORITY: 5 U.S.C. 2108, 3309-3315, and 8140; 10 U.S.C. 507, 972, 1074, 1201-1221; 32 U.S.C. 318, 319; 37 U.S.C. 204, 403, 802; 38 U.S.C. 310, 331, 610, and 612; and EO 9397.

PURPOSE: Information provided is used by processing activities in determining whether the diseased, injured, or deceased member was or was not acting in line of duty when the disease, injury, or death occurred. The information will be filed in the member's master personnel record group and the member, if alive, or the surviving next of kin will receive a copy as well. Information may be reviewed by the base ground safety office.

ROUTINE USES: NONE.

DISCLOSURE IS MANDATORY: If information known to a military witness is not provided when lawfully ordered to do so by the investigating officer, the witness is subject to punishment under the UCMJ.

NOTES:

1. Omit if military member is not suspected of having committed an offense.
2. After explaining the purpose and importance of the investigation, military witnesses should be requested to provide any relevant information known to them. In the rare case, a military witness may not wish to disclose information. The investigating officer can legally order a military witness other than the subject of the investigation, to disclose the information if the disclosure will not tend to incriminate the witness. A military witness is entitled to rely upon those rights provided by Article 31: UCMJ, when requested or

ordered to disclose information that might tend to be self-incriminating. Before ordering a military witness to disclose information, the IO should consult with the staff judge advocate.

3. The investigating officer, any other person authorized by 10 U.S.C. 936, or a notary public, may administer the oath. The typed or printed name, grade, and organization or, if a notary, the notary's identification will be entered under the signature block.

4. Include the Privacy Act statement on the form used to collect the witness statement.

Figure A2-2. Sample Format for the Statement of a Military Witness Other Than the Subject of the Investigation.

STATEMENT (see note 3)

I, _____ (name) _____ (grade) _____ (organization) _____, have been advised that I may submit a sworn statement in connection with this investigation concerning my _____ (specify what the disease or injury is) _____. I have been advised that 10 U.S.C. 1219 provides as follows: "A member of an armed force may not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that (he) (she) has. Any such statement against (his) (her) interest, signed by a member, is invalid." I understand that I cannot be required to sign any such statement but that if I willingly do so it may be considered in determining my line of duty and misconduct status. (I have also been advised of my rights under Article 31: UCMJ (see note 1).) I make and sign the following sworn statement voluntarily and with this understanding:

(body of statement)

(signature of member)

Subscribed and sworn to before me this _____ day of _____, 19 _____.

(signature of person administering the oath (see note 2))

AUTHORITY: 5 U.S.C. 2108, 3309-3315, and 8140; 10 U.S.C. 507, 972, 1074, 1201-1221; 32 U.S.C. 318, 319; 37 U.S.C. 204, 403, 802; 38 U.S.C. 310, 331, 610, and 612; and EO 9397.

PURPOSE: Information provided is used by processing activities in determining whether you were or were not acting in line of duty when your disease or injury occurred. The information will be filed in your master personnel record group and you will be given a copy as well. Information may be reviewed by the base ground safety office.

ROUTINE USES: NONE.

DISCLOSURE IS VOLUNTARY: If information is not provided, the Air Force will complete processing using information that is available.

NOTES:

1. Omit if military member is not suspected of having committed an offense.
2. The investigating officer, any other person authorized by 10 U.S.C. 936, or a notary public, may administer the oath. The typed or printed name, grade, and organization or, if a notary, the notary's identification will be entered under the signature block.
3. Include the Privacy Act statement on the form used to collect the witness statement.

Figure A2-3. Sample Format for Statement of the Subject of the Investigation.

ASSD DIR	ASSD ANCH	SUP ANCH	FMO	KULIS	MG
SEC	Department of Military and Veterans Affairs				DEP
ACCT	FEB 22 1989				AGES
PERS					VETS
Administrative & Support Services Division (ASSD)					
NOTE:					

Chapter VIII

LINE OF DUTY AND MISCONDUCT (INJURY, DISEASE, AND DEATH)

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0801 WHY MISCONDUCT -- LINE OF DUTY INVESTIGATIONS

a. *Extension of enlistment.* An enlisted member of the naval service who is unable to perform his duties for more than one day because of intemperate use of drugs or alcoholic liquor or because of disease or injury resulting from his misconduct is liable, after his return to duty, to serve for a period, that when added to the period that he served before his absence from duty, amounts to the term for which he was enlisted or inducted (10 U.S.C. §972).

b. *Longevity and retirement multiplier.* Eligibility for increases in pay because of longevity and the amount of retirement pay to which a member may be entitled is dependent upon his cumulative years of "creditable service". An enlisted member who is unable to perform his duties for more than one day because of intemperate use of drugs or alcoholic liquor or because of disease or injury resulting from his misconduct is not entitled to include such periods in computing "creditable service" (paragraph 10104, Department of Defense Military Pay and Allowances Entitlements Manual--DODPM).

c. *Forfeiture of pay.* A member of the naval service on active duty who is absent from his regular duties for a continuous period of more than one day because of disease that is directly caused by and immediately follows his intemperate use of liquor or habit-forming drugs is not entitled to pay for the period of that absence. If pay is forfeited for more than one month, however, the member is entitled to \$5.00 for personal expenses for each month that his pay is forfeited (10315c, DODPM). Pay is not forfeited for absence from duty caused by injuries. Pay is not forfeited for diseases not directly caused by and immediately following intemperate use of liquor or habit-forming drugs (paragraph 10315b, Department of Defense Military Pay and Allowances Entitlements Manual).

d. *Disability retirement and severance pay.* In order for members of the naval service who sustain permanent disabilities while on active duty to be eligible to receive certain retirement or severance pay benefits, the requirements of the applicable statutes must be met. One of these requirements is that the disability must not result from the member's "... intentional misconduct or willful neglect..." and must

not have been "...incurred during a period of unauthorized absence." 10 U.S.C. §§1201, 1203, 1204, 1206, and 1207. Physical evaluation determinations are made independently and are not controlled by misconduct-line of duty findings or conclusions recorded under the provisions of this Manual. They are instead controlled by regulations contained in the Disability Evaluation Manual (SECNAVINST 1850.4). As a practical matter, such determinations for physical review purposes must rest upon the evidence available. Generally this will be those facts which have been officially recorded and are on file within the Department of the Navy. This would include reports and investigations submitted in accordance with the provisions of this Manual.

e. *Benefits administered by the Veterans' Administration.* In determining whether a veteran or his survivors or dependents are eligible for certain benefits, the Veterans' Administration makes its own determinations with respect to misconduct and line of duty. As a practical matter, these determinations must rest upon the evidence available and generally this will be those facts which have been officially recorded and are on file within the Department of the Navy. Statutes governing these benefits generally require that disabling injury or death be "service connected" which means that the disability was incurred or aggravated or that the death resulted from a disability incurred or aggravated "in line of duty" (38 U.S.C. §101). The statutory criteria for making such determinations are contained in 38 U.S.C. §105.

0802 WHAT CONSTITUTES LINE OF DUTY

a. *General rule.* For purposes of these regulations injury or disease incurred by naval personnel while in active service will be considered to have been incurred "in line of duty" except when incurred under one or more of the following circumstances:

(1) As a result of the member's own misconduct as determined under the regulations contained in this chapter;

(2) While avoiding duty by deserting the service;

(3) While absent without leave and such absence materially interfered with the performance of required military duties (see subsection d below);



(4) While confined under sentence of a court-martial which included an unremitted dishonorable discharge; or

(5) While confined under sentence of a civil court following conviction of an offense which is defined as a felony by the law of the jurisdiction where convicted.

b. *Active service defined.* "Active service" as used in this section includes full-time duty in the naval service, extended active duty, active duty for training, leave or liberty from any of the foregoing, and inactive duty training.

c. *Presumption.* It is presumed that an injury or disease suffered by a member of the naval service was incurred in line of duty. Clear and convincing evidence is required to overcome this presumption.

d. *Unauthorized absence*

(1) Whether absence without leave materially interferes with the performance of required military duties necessarily depends upon the facts of each situation, to which must be applied a standard of reality and common sense. No definite rule can be formulated as to what constitutes "material interference." Generally speaking, absence in excess of twenty-four hours constitutes a material interference unless there is evidence to establish the contrary. Similarly, an absence of shorter duration will not be considered to be a material interference unless there is clear and convincing evidence to establish the contrary. A statement of the individual's commanding officer, division officer, or other responsible official, and any other available evidence to indicate whether an absence without leave constituted a material interference with the performance of required military duties, should be included in the record whenever appropriate.

(2) It should be noted that under 10 USC §1207 a member is ineligible for physical disability retirement or physical disability severance benefits from the Armed Forces if his disability was incurred during a period of unauthorized absence, regardless of the length of such absence and regardless of whether

such absence constituted a material interference with the performance of his required military duties.

0803 WHAT CONSTITUTES MISCONDUCT

a. *Generally.* As used in this chapter misconduct is wrongful conduct. Simple or ordinary negligence or carelessness, standing alone, does not constitute misconduct. To support an opinion of misconduct it must be established by clear and convincing evidence that the injury or disease was either intentionally incurred or was the proximate result of such gross negligence as to demonstrate a reckless disregard of the consequences. If a resulting injury or disease is such that it could have been reasonably foreseen from the course of conduct, it is said to be a "proximate result." The fact that the conduct violates a law, regulation, or order -- or the fact that the conduct is engaged in while the individual is intoxicated -- does not, of itself, constitute a basis for a determination of misconduct. Such circumstances should, however, be considered along with all other facts and circumstances in determining whether the conduct of the individual was grossly negligent and whether the incurrence of injury or disease was reasonably foreseeable as a probable result of such conduct.

b. *Presumption.* It is presumed that injury or disease suffered by a member of the naval service is not the result of his own misconduct. Clear and convincing evidence is required to overcome this presumption.

c. *Examples.* If an individual intentionally wounds himself with a firearm, the injury is due to his own misconduct. If an individual handles a firearm in a grossly negligent manner and thereby wounds himself, that too would be an injury due to his own misconduct because a wound is a reasonably foreseeable result of the grossly negligent handling of firearms. If, on the other hand, an individual was standing on a sidewalk and, while handling a firearm in a grossly negligent manner, was struck by an automobile which had gone out of control, the injuries would not be due to his own misconduct because they would not have been a reasonably foreseeable result (proximate result) of the wrongful conduct in which the individual was engaged. In this



latter example, the injuries are said to be the result of an independent intervening cause.

0804 RELATIONSHIP BETWEEN MISCONDUCT AND LINE OF DUTY

For purposes of these regulations, "misconduct" can never be "in line of duty." Hence a finding or determination that an injury was incurred as a result of the member's own misconduct must be accompanied by a finding or determination that the member's injury was incurred "not in line of duty." It is permissible, however, to find that an injury was incurred "not as a result of misconduct" and "not in line of duty." As an example, a member who is absent without authority may be injured by a felonious assault or struck by a vehicle driven by a drunken driver. Obviously the injury was incurred through no fault of the member, but if the absence materially interfered with the performance of his required military duties a finding of "not in line of duty" must result. Accordingly, the three possible combinations of findings are as follows:

- a. "In line of duty" and "not due to the member's own misconduct;"
- b. "Not in line of duty" and "not due to the member's own misconduct;" or
- c. "Not in line of duty" and "due to the member's own misconduct."

0805 WHEN MISCONDUCT - LINE OF DUTY DETERMINATIONS REQUIRED

In each case in which a member of the naval service incurs an injury which might result in a permanent disability or which results in his physical inability to perform duty for a period exceeding 24 hours (as distinguished from a period of hospitalization for evaluation or observation), findings concerning line of duty and misconduct must be made.

0806 RESPONSIBILITY TO ORDER INVESTIGATIONS

a. *Members of the naval service.* It is the responsibility of the commanding officer or officer in charge of the individual concerned at the time of incurrence of an injury, disease, or death to convene the necessary investigation or to take other appropriate

action as required by this chapter. If the command is an afloat command, the investigation of incidents occurring ashore may be conducted by another appropriate command when the afloat command so requests and certifies that conduct of the investigation by the afloat command would not be feasible. The provisions of section 0207 of this Manual should be followed if the incident to be investigated occurs at a place far removed from the location of the command which has responsibility to investigate or if the incident involves the injury or death of individuals of more than one command. When naval personnel from more than one command are injured or die in an incident which should be investigated under these regulations, a single investigation of the matter should be conducted when practicable. In the absence of direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command, the area coordinator, or the subordinate commander authorized to convene general courts-martial and designated by the area coordinator for this purpose, shall resolve any issue as to the appropriate command to conduct the investigation and shall ensure that any required investigation is made. The commanding officers or officers in charge of the personnel involved shall furnish the authority coordinating the matter with the information mentioned in section 0207b of this Manual. If a member of the naval service is injured at a place distant from his command and is admitted to a naval hospital, the commanding officer of the hospital shall, if no investigation is being made of the incident, promptly report the matter to the area coordinator or designated subordinate commander who shall take action to ensure that any required investigation is made.

b. *Members of other armed services.* Whenever a member of an armed service other than the naval service is injured, dies, or incurs disease under circumstances that would warrant investigation under these regulations, and it would be appropriate for an officer in command of an activity of the Department of the Navy to convene an investigation (e.g., the individual is attached to a naval activity or is being treated in a naval medical facility), the nearest command of the parent service of the individual shall be notified. If requested, an appropriate investigation under these regulations shall be convened and the report thereof forwarded in accordance with the request. No further action need be taken within the Department of the Navy.



0807 MENTAL RESPONSIBILITY

a. *General rule.* A member may not be held responsible for his acts and their foreseeable consequences if, as the result of mental defect, disease, or derangement, he was unable to comprehend the nature of such acts or to control his actions. Additionally, a member may not be held responsible for his acts or their foreseeable consequences if, as the result of a mental condition not amounting to a defect, disease, or derangement and not itself the result of prior misconduct, he was unable to comprehend the nature of such acts and to control his actions. Thus, an injury which was the proximate result of acts performed while the member injured was suffering impairment of his mental faculties as the result of voluntary ingestion of a hallucinogenic drug would be deemed to have been incurred as the result of the member's own misconduct. Certain properties of such drugs are notorious and their use is prohibited by article 1151, U.S. Navy Regulations; hence the impairment would support a finding of misconduct.

b. *Presumption.* In the absence of evidence to the contrary, there is a presumption that all members are mentally responsible for their acts. This presumption makes it unnecessary in the majority of cases that an administrative fact-finding body seek evidence that a member was mentally responsible at a certain time unless credible evidence is developed or discovered tending to indicate that he was not mentally responsible at that time. Such evidence may consist of circumstances attending certain acts; evidence of previous abnormal, irrational, or aberrant behavior; expert opinion evidence of mental illness; or other evidence directly or indirectly tending to indicate lack of mental responsibility. In any case in which a question of the mental responsibility of a member is raised by the facts developed or by the nature of the incident, the presumption of mental responsibility ceases to exist and the preponderance of information in the investigation must clearly and convincingly establish the member's mental responsibility before the line of duty presumption discussed in section 0802c can be overcome and thus authorize a determination that an injury or disease was incurred as a result of the member's own misconduct.

c. *Suicide attempts.* In view of the strong human instinct for self-preservation, a bona fide suicide

attempt, as distinguished from other acts of intentional self-injury, is considered to create a strong inference of lack of mental responsibility. In cases of bona fide suicide attempts, therefore, further evidence must be sought on the question of mental responsibility, including, where warranted, expert psychiatric evaluation. If there is no reasonable and adequate motive for suicide supplied by the evidence, the suicide attempt will be sufficient to rebut the presumption of mental responsibility and the determination of whether the attempt was misconduct must then necessarily rest upon other evidence. Intentional self-inflicted injury, not prompted by a serious suicidal intent, is at most a suicidal gesture and such injury, unless lack of mental responsibility is otherwise shown, is deemed to be incurred as the result of the member's own misconduct.

0808 INTOXICATION AND DRUG ABUSE

a. *Intoxication.* An injury incurred as the proximate result of prior and specific voluntary intoxication is incurred as the result of misconduct. In order for intoxication alone to be the basis for a determination of misconduct respecting a related injury, there must be a clear showing that the member'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. Intoxication (impairment) may be produced by alcohol, a drug, or inhalation of fumes, gas, or vapor. For a further description of drugs and drug abuse, see article 1151 of U.S. Navy Regulations.

b. *Alcohol and drug induced disease.* Inability to perform duty resulting from disease which is directly attributable to a specific, prior, proximate, and related intemperate use of alcoholic liquor or habit-forming drugs is the result of misconduct. See 37 USC 802. Habituation may or may not be associated with a specific inability to perform duty which is directly due to the specific and proximate use of alcohol or drugs, but only the period of actual inability to perform duty directly related to the specific and proximate use of alcohol or drugs may be charged as time lost due to misconduct. Time spent in evaluating habituation without specific inability to perform duty shall not be charged as time lost due to misconduct.



LINE OF DUTY AND MISCONDUCT

0809 MEDICAL AND DENTAL TREATMENT

a. *Refusal of treatment.* If a member unreasonably refuses to submit to medical, surgical, or dental treatment, any disability that proximately results from such refusal shall be deemed to have been incurred as a result of the member's own misconduct. See article 18-15, Manual of the Medical Department.

b. *Venereal disease.* Any disability resulting from venereal disease shall not support a misconduct finding if the member has complied with regulations requiring him to report and receive treatment for such disease. See article 22-18, Manual of the Medical Department.

0810 SPECIAL CONSIDERATIONS IN DEATH CASES

a. *When fact-finding body required.* A fact-finding body (either formal or informal), must be convened in the following situations:

(1) In any case in which the death of a member of the naval service occurred other than from natural causes, and particularly all apparent suicides (when the member commits suicide and had access to classified information, see paragraph 5-4, OPNAVINST 5510.1[Series]) (for deaths resulting from aircraft accidents, see section 0902);

(2) In any case in which civilians or other non-naval personnel are found dead on a naval installation under peculiar or doubtful circumstances unless the incident is one over which the Naval Investigative Service has exclusive jurisdiction. (See section 0212 of this Manual; SECNAVINST 5520.3[Series]; paragraph 2-5, OPNAVINST 5510.1[Series]).

(3) In any case involving death in which the adequacy of medical care is reasonably in issue. (See section 2003 of this Manual.)

b. *Findings concerning misconduct and line of duty prohibited.* While it is important that all significant and relevant facts be recorded in a timely manner in any of the situations described in subsection a above, it should be noted that no survivor's benefit statute administered by the Department of the Navy is conditioned upon a misconduct-line of duty finding. To express recommendations or findings concerning misconduct or line of duty in death cases serves no useful purpose and such expressions are not desired by the Veterans' Administration, which makes its own findings. Accordingly, fact-finding bodies will express no opinion concerning misconduct or line of duty in death cases. Nor shall the convening authority or reviewing authorities enter any finding in this regard. If such a recommendation and/or finding has been recorded inadvertently or recorded af-

ter the injury but before death occurred, the record need not be returned for correction. Reviewing authorities should note the error and indicate its lack of validity in the forwarding endorsement. In any death case in which the record contains an adverse finding or opinion with respect to line of duty or misconduct, it is proper for reviewing authorities to comment and/or to enclose additional data which may tend to counter such finding or opinion.

c. *Death as a result of enemy action.* No report to the Judge Advocate General is required in the case of a death occurring as a result of enemy action. However, a fact-finding body should be convened, and the record forwarded in any case in which peculiar or doubtful circumstances are involved. Because a number of commercial life insurance policies contain certain restrictions and/or certain types of double indemnity provisions, it is desirable to ensure that the essential facts are recorded while witnesses are known and available. To the extent feasible, the facts reported should permit determinations as to whether death resulted from accidental causes, natural causes, or enemy action.

d. *Inquest duties.* A fact-finding body ordered to investigate the death of a member of the naval service, or of any person found dead on a naval installation, shall perform the duties of an inquest if the death was suffered under peculiar or doubtful circumstances. After convening, the fact-finding body will proceed at the first available opportunity to the place where the body may be, carefully identify it, and note the surroundings, if pertinent. Release of the remains of deceased personnel is to be expedited in all cases. Such medical witnesses as may be available shall be interviewed or their official reports obtained, including, whenever possible, evidence from the doctor who performed the autopsy if one was made, or a doctor who assisted or witnessed such autopsy. The fact-finding body will ascertain from these medical witnesses the exact condition of the body and the medical opinion as to the cause of death. The date of death shall be stated as a fact or as an opinion with the time of death fixed as precisely as the evidence permits. Copies of the autopsy protocol and the death certificate shall be appended as enclosures to the record.

e. *Autopsies.* When death of a member of the uniformed services on active duty or active duty for training occurs under any of the circumstances set forth in article 17-2, Manual of the Medical Department and when an autopsy is authorized by the commanding officer upon advice of the fact-finding body or medical officer, and in other cases in which authorization from proper authority has been obtained, the appointed fact-finding body shall provide the medical officer designated to conduct the autopsy with a detailed preliminary report of circumstances surrounding the death. In those cases in which authorization for autopsy has been granted by other than the commanding officer, the medical officer shall be



responsible for advising command authority that such authorization has been granted so as to facilitate the preliminary investigation and report thereof to the medical officer conducting the autopsy. Upon completion of the autopsy, the medical officer conducting the autopsy shall provide the fact-finding body with a copy of the preliminary autopsy findings as to the cause of death and, when completed, a copy of the final protocol. The fact-finding body shall provide the medical officer conducting the autopsy with a copy of the final investigative report. (See Appendix A-8-a which quotes article 17-2, Manual of the Medical Department.)

f. *Unavailability of documents.* Notwithstanding the guidance contained in subsections 0810d and e above, completion of a death investigation and its forwarding will not be delayed to await final autopsy reports, autopsy protocols, death certificates, or similar documents unless their inclusion is absolutely essential to the completion of the investigative report. The unavailability of such documents should be noted; the investigation completed and forwarded. Documents subsequently obtained shall be forwarded by separate correspondence via the review chain, advance copy to the Judge Advocate General, with appropriate reference to the report of investigation/forwarding endorsement.

g. *Letter reports.* In those death cases in which the appointment of a fact-finding body is not required by subsection a above, and yet it is considered that a record of the circumstances involved be maintained in the Office of the Judge Advocate General, a letter report may be used. An example of a letter report in a death case is contained in Appendices A-8-b(1) and A-8-b(2).

0811 WHEN CLAIMS OR OTHER MATTERS ARE INVOLVED

a. *Examination of reports.* Any report of injury or death should be carefully examined to see if potential claims by or against the Government 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. See chapter XXIV of this Manual concerning the requirements for processing such claims. In any case involving death, serious injury, or serious illness in which the adequacy of medical care is reasonably in issue, see section 2003 of this Manual for investigation requirements.

b. *Combining investigations.* There is no prohibition against combining misconduct-line of duty investigations with claims investigations. Facts elicited in a claims investigation may be sufficient and may be used as a basis for entering line of duty and not misconduct findings in the health record as authorized by section 0814b or in making the abbreviated reports as authorized by section 0814c.

c. *Forwarding advance copies.* Where investigations have been combined (or directed to fulfill more than one function) and there is need for retaining the original record at the command or reviewing level for such purposes as courts-martial, contractual disputes, claims, litigation, etc., the retaining command shall ensure that a legible advance copy with all enclosures is forwarded to the Judge Advocate General (Code 21).

0812 SPECIAL CONSIDERATIONS PERTAINING TO RESERVISTS

See section 0911 of this Manual.

0813 RELATIONSHIP TO DISCIPLINARY ACTION

An adverse determination as to misconduct or line of duty is not a punitive measure. Disciplinary action, if warranted, shall be taken independently of any such determination. Similarly, a favorable determination as to misconduct and line of duty does not



preclude separate disciplinary action nor is such a favorable determination in any way relevant or binding on the issue of guilt or innocence of the member in a separate disciplinary proceeding. The loss of rights or benefits resulting from adverse determinations as to misconduct and line of duty may be relevant and, at the request of the accused, may be admissible as matters in extenuation and mitigation in a disciplinary proceeding.

0814 HOW FINDINGS ARE TO BE RECORDED IN INJURY CASES

a. *JAG Manual investigations.* A fact-finding body (either formal or informal) must be convened and the commanding officer must make findings concerning misconduct and line of duty in any case in which:

(1) The injury was incurred under circumstances which suggest that a finding of "misconduct" might result;

(2) The injury was incurred under circumstances which suggest that a finding of "not in line of duty" might result;

(3) There is a reasonable chance of permanent disability being involved and the commanding officer considers that the appointment of a fact-finding body is the appropriate means by which to ensure that an adequate official record is made concerning the circumstances surrounding the incident;

(4) The injured member is in the Naval Reserve or the Marine Corps Reserve and the commanding officer considers that the appointment of a fact-finding body is the appropriate means by which to ensure that an adequate official record is made concerning the circumstances surrounding the incident.

b. *Entry in health or dental record.* No fact-finding body need be convened and no report need be forwarded to the Judge Advocate General concerning misconduct and line of duty when:

(1) In the opinion of the medical officer (or representative of a medical department) as concurred in by the commanding officer, the injury is not likely to result in a permanent disability and was incurred

"in line of duty" and "not as a result of the member's own misconduct";

(2) Appropriate entries to this effect have been made in the service member's health or dental record (see article 16-45 and 16-71, Manual of the Medical Department).

NOTE: In any case a summary report may be made to the Judge Advocate General in accordance with subsection c below if there appears to be any reason for maintaining a record in that office.

c. *Use of forms or letter reports*

(1) An injury report form and/or letter report (RCS JAG 5800-19) may be used in any case in which "line of duty" and "misconduct" findings are required by section 0805, and in which all of the following conditions are met:

(a) In the opinion of the medical officer (or representative of a medical department), concurred in by the commanding officer, the injury was incurred "in line of duty" and "not as a result of the member's own misconduct";

(b) A fact-finding body is not required under section 0814a and is not otherwise contemplated; and

(c) The reporting requirements of the Judge Advocate General are not fully satisfied by a health or dental record entry under section 0814b— for example, a health or dental record entry will not suffice where a permanent disability may be involved.

(2) Reports may be made to the Judge Advocate General using NAVJAG Form 5800/15 without a covering letter. See Appendix A-8-c which contains such a form completed for this purpose.

(3) Any accident reporting form including the Marine Corps Accident and Injury Report (NAVMC 10767) may be used in reporting injuries resulting from motor vehicle accidents. These forms must be forwarded with a letter report which includes the following information if it is not otherwise contained on the form:



(a) A specific statement that the injury was incurred "in line of duty" and "not as a result of the member's own misconduct";

(b) Name, rank or rate, and serial number of the medical officer or medical department representative who concurred in the line of duty findings;

(c) A statement as to the nature and extent of any injury and what, if any, permanent disability may be involved. See Section 0308 for advice required to be given by the Privacy Act.

d. *Example of the use of forms.* Appendix A-8-d and A-8-e demonstrate how to use Marine Corps Form NAVMC 10767 with an accompanying supplemental letter report.

e. *Action by officer exercising general court-martial jurisdiction.* The form or letter report which is directed to the Judge Advocate General under this section shall be forwarded via an officer exercising general court-martial jurisdiction, who will cause it to be examined by a judge advocate. Examples of recommendations of examining judge advocates are set forth in Appendix A-8f.

0815 MISCONDUCT AND LINE OF DUTY HEARINGS

a. *Action by convening authority.* In each case in which a member of the naval service has incurred an injury or contracted a disease and the circumstances are such that investigation by a fact-finding body was required and conducted under sections 0810a or 0814a, the convening authority of the fact-finding body, unless he returns the record or report for further inquiry, shall take one of the following actions:

(1) If a fact-finding body was directed to, and did inquire into, the circumstances surrounding the

incurrence of an injury or the contraction of a disease, and the convening authority concludes that such injury or disease was incurred "in line of duty" and "not due to the member's own misconduct" (or that clear and convincing evidence is not available to rebut the presumption of line of duty and not misconduct), he shall express this conclusion in his action on the record of proceedings. This action may be taken regardless of whether it differs from or concurs with an opinion expressed by the fact-finding body.

(2) If the member involved was designated a party before a formal fact-finding body and was fully accorded his rights as such, and if the fact-finding body was directed to, and did inquire into, the circumstances surrounding the incurrence of an injury or the contraction of a disease, the convening authority shall express his conclusions concerning misconduct and line of duty in his action on the record of proceedings. Any of the permissible findings described in section 0804 may be made regardless of whether they differ from or concur with opinions expressed by the fact-finding body.

(3) If the member was not designated a party before the fact-finding body, or if having been so designated, he was not fully accorded his rights as such, and if, upon review of the record or report of the fact-finding body, the convening (or higher) authority has substantial doubt that the injury or disease of the member was incurred in line of duty, he shall afford the member a hearing or shall forward the record or report to the command to which the member is attached so that a hearing may be afforded. The hearing in such a case shall include the following elemental requirements:

(a) The member shall be advised that questions have arisen concerning the circumstances under which he incurred an injury or disease and that line of duty and misconduct determinations must be made;

(b) If the member is suspected of having committed an offense, he shall be so advised as required by Article 31(b) UCMJ;

(c) The member shall be advised that he has the right not to give information regarding the origin,

