

h. 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 1 day because of disease that is directly caused by and immediately follows his intemperate use of drugs or alcohol is not entitled to pay for the period of that absence. Pay is not forfeited for absence from duty caused by injuries. Pay is not forfeited for 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 regularly 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.

38-5. Major CONUS Army commanders

Major CONUS Army commanders will supervise the LD investigation process within the areas under their jurisdiction. (Areas of jurisdiction are in app B.)

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38-6. Major overseas commanders and CONUS casualty area commanders

These commanders, as listed in appendix B, will—

- Supervise the LD investigation process within their jurisdictions.
- Ensure LD investigations are initiated promptly.
- Ensure LD investigations are submitted in the proper format.

38-7. Final approving authority

The General Court-Martial Convening Authority (GCMCA)—

a. Acts as final approving authority for formal line of duty investigations in the name of the SA. He or she reviews LD investigations for conformance to this regulation.

b. May delegate final approving authority in writing to an appropriate field grade officer on the staff of the GCMCA. A copy of the delegation document will be included in all cases where delegated authority has been exercised.

c. In special cases, request approval from HQDA (DAPC-PEZ) that final approving authority be vested in a General Officer in the chain of command who has access to military legal advice but does not have GCMCA.

d. Except as provided in paragraph 38-11, final approving authority will act as "reviewing authority." Reviewing authority block on DD Form 261 (Report of Investigation—Line of Duty and Misconduct Status) will be annotated, "SAME AS FINAL APPROVING AUTHORITY."

38-8. Appointing authority

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

(1) If the incident occurs while the member is away from his or her unit (e.g., on leave, in transit, AWOL), the nearest Army unit with SPCMCA will conduct the investigation. For ARNG members not Federalized and/or not attending an Army service school, the parent unit is responsible for the investigation.

(2) If the incident occurs during a period when the member and his or her unit are training or on another exercise away from the parent installation, the unit commander and the parent installation are responsible for conducting the investigation. The host casualty area commander and Medical

Treatment Facility (MTF) commander will provide supporting documentation as requested.

b. May approve informal LD investigations except within the ARNG.

c. May delegate all duties and responsibilities to the AG or other appropriate staff officer. All delegations will be in writing and will remain valid until revoked in writing. Actions taken pursuant to a delegation will include a copy of the delegation document.

38-9. Unit commander

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

38-10. Commanders of medical treatment facilities (MTF)

Commanders of MTF or authorized representatives (attending physicians or patient administrators) will ensure section I of DA Form 2173 is completed promptly when a condition outlined in paragraph 39-2b exists. They make determinations that involve—

a. Total physical incapacitation for more than 24 hours because of the abuse of alcohol or other drugs (paragraph 41-10a).

b. Conditions that existed prior to service (EPTS) and diseases not related to misconduct or negligence.

38-11. State adjutants general (AGs)

State AGs will function as the reviewing authorities for ARNG.

Chapter 39 Line of Duty Determinations

39-1. General

Line of duty determinations are essential for protecting the interest of both the individual concerned and the U.S. Government, where service is interrupted by injury, disease, or death. A person who becomes a casualty because of his or her intentional misconduct or willful negligence can never be said to be injured, diseased, or deceased in the line of duty. Such a person stands to lose substantial benefits as a consequence of his or her actions; therefore, it is critical that the decision to categorize injury, disease, or death as not in the line of duty only be made after the deliberated and ordered procedures described in this regulation are followed.

39-2. Requirements for LD investigations

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

a. The LD determination is presumed to be "LD YES" without an investigation—

(1) In the case of disease, except as described in c(1) and (8) below.

(2) In the case of injuries clearly incurred as a result of enemy action or attack by terrorists.

(3) In the case of death due to natural causes or while a passenger in a common commercial carrier or military aircraft.

b. In all other cases of death or injury, except injuries so slight as to be clearly of no lasting significance (e.g., superficial lacerations/abrasions or mild heat injuries), an LD investigation must be conducted. (In death cases, the Army makes no determination. See para 37-37.)

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

(1) Injury, disease, or medical condition that occurs under strange or doubtful circumstances or is apparently due to misconduct or willful negligence.

(2) Injury or death involving the abuse of alcohol or other drugs.

(3) Self-inflicted injuries or suicide.

(4) Injury or death incurred while AWOL.

(5) Injury or death that occurs while an individual was enroute to final acceptance in the Army.

(6) Death of a USAR or ARNG member while participating in authorized training or duty.

(7) Injury or death of a USAR or ARNG member while traveling to or from authorized training or duty.

(8) When a USAR or ARNG member serving on an active duty tour of 30 days or less is disabled due to disease.

(9) In connection with an appeal of an unfavorable finding of abuse of alcohol or other drugs (para 41-10a).

(10) Other cases when requested or directed.

39-3. Informal LD investigations

Documentation for an informal investigation typically consists of DA Form 2173 completed by the MTF and the unit commander, and approved by the appointing authority, state AG, or higher authority. The final determination of an informal investigation can result in a finding of "in LD" only, except as provided in paragraph 41-10. See chapter 40, section I, for a detailed discussion of the informal LD investigation.

39-4. Formal LD investigation

A formal investigation is a detailed investigation that normally begins with DA Form 2173 completed by the MTF and annotated by the unit commander as requiring a formal investigation. The appointing authority, on receipt of the DA Form 2173, appoints

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 requesting statements 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 need not sign such a statement. 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 rights to counsel. A DA Form 3881 (Rights Warning Procedures/Waiver 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 top.

b. Any of the following, if applicable:

(1) Statement or written correspondence 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 OMPF² 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 22331-0400.

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 ADT under REP-63. This copy will be filed in the individual's held 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 USPPD 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 activities where the Army has been designated as the 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 counselling 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.

7. 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 the 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 APO, 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, 16)

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 appeal action in paragraph 41-16.

14. A copy of a LD investigation should be returned to the initiating MTF on 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 Federized 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. USFPO of the State.
 - c. Unit commander for file in the member's MPR.
 - 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 40-8j(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 e 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. *Venereal 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 FTID, 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.

41-17. Revision or location of I.D. badge

41-18. Reporting cases for physical disability evaluation

41-19. Reporting cases for physical disability evaluation

41-20. Reporting cases for physical disability evaluation

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Appendix F Rules Governing Line of Duty and Misconduct Determinations

In every formal investigation, the purpose is to find out whether there is evidence of intentional misconduct or willful negligence which is substantial and of a greater weight than supports any different conclusion so as to rebut the presumption of "in line of duty." To arrive at such decisions, several basic rules can be applied to various situations. The specific rules of misconduct are—

Rule 1

Injury or disease directly caused by the misconduct or willful negligence is not in line of duty. It is due to misconduct. This is a general rule and must be considered in every case in which misconduct or willful negligence appears to be involved. Generally, two issues must be resolved when a member is injured (or contracts a disease), whether the injury or disease was incurred in the line of duty and whether it was due to misconduct. Normally, the two issues are resolved at the same time under the same facts and same rules.

Rule 2

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

Rule 3

Injury or disease that results in incapacitation because of the abuse of alcohol and other drugs is not in line of duty. It is due to misconduct. This rule is on the effect of the drug on the member's conduct, as well as the physical effect on his body. Any erratic or reckless conduct caused by the effect of the drug, which directly causes his injury or disease is misconduct. The fact that the member may have a pre-existing physical condition which caused him to be susceptible to the effects of the drug does not excuse such misconduct.

Rule 4

Injury or disease that results in incapacitation because of the abuse of intoxicating liquor is not in line of duty. It is due to misconduct. The principles in Rule 3 apply here. While the mere drinking of alcoholic beverages is not misconduct, one who voluntarily becomes intoxicated is held to as high a standard of conduct as one who is sober. Intoxication does not excuse his conduct. While normally there are behavior

patterns common to persons who are intoxicated, some, if not all, of these characteristics may be caused by other conditions. For example, an apparent drunken stupor might have been seen caused by a blow on the head. Consequently, when the fact of intoxication is not clearly fixed, care should be taken to determine the actual cause of any irrational behavior which is like or the same as that of intoxication.

Rule 5

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

Rule 6

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

Rule 7

Injury caused by wrongful aggression, or voluntarily taking part in a fight or like encounter, in which one is equally at fault in starting or continuing, is not in line of duty. It is due to misconduct. An injury received by a member in an affray in which he is the aggressor is caused by his own misconduct. This rule does not apply when a person is the victim of an unprovoked assault and he sustains injuries in an attempt to defend himself. Provocative actions or language used by the member, in which a reasonable person would expect retaliation, is a willful disregard for personal safety, and injuries directly resulting therefrom are due to misconduct. When an adversary uses excessive force or means that could not have been reasonably foreseen in the incident, the resulting injury is not considered as having been caused by misconduct. Except for self-defense, for a member to persist in a fight or

other encounter after his adversary produces a dangerous weapon is to act in willful disregard for safety and is willful negligence.

Rule 8

Injury caused by driving a vehicle when in an unfit condition, and the member knew or should have known about it, is not in line of duty. It is due to misconduct. A member involved in an automobile accident caused by his having fallen asleep while driving is not guilty of willful negligence solely because he fell asleep. The test is whether a person, under the same circumstances, would undertake the trip without falling asleep while driving. Unfitness to drive may have been caused by voluntary intoxication or use of drugs.

Rule 9

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

Rule 10

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

Rule 11

Misconduct or willful negligence of another person is charged to a member if the latter has control over and is thus responsible for the former's conduct, or if the misconduct or neglect shows enough planned action to establish a joint enterprise. The mere presence of the member is not a basis for charging him with the misconduct or willful

