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SECRETARY OF THE AIR FORCE**



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Personnel

**LINE OF DUTY (MISCONDUCT)
DETERMINATION**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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This publication sets guidelines for Line of Duty and Misconduct Determinations (LODs). It applies to all active duty members as well as members and units of the Air Reserve Component (ARC)--the Air National Guard (ANG) and the USAF Reserve (USAFR). It implements Air Force Policy Directive (AFPD) 36-29, *Military Standards*.

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Maintain and dispose of all records created as a result of prescribed processes in accordance with AFMAN 37-139, due to be identified as AFMAN 33-322, Volume 4, "*Records Disposition Schedule*". The Paperwork Reduction Act of 1995 affects this instruction. The Forms Management Program per AFI 33-360, volume 2, *Forms Management Program* affects this instruction. Process supplements that affect any military personnel function as shown in Air Force Instruction 33-360, volume 1. *Publications Management Program*. HQ AFPC/JA must review all supplements to this instruction.

SUMMARY OF REVISIONS

This revision incorporates Interim Change IC 2002-1 TO AFI 36-2910. This change incorporates interim change (IC) 2002-1 (**Attachment 9**). This change requires an informal line of duty determination to be initiated in the case of each active duty death in order to fulfill requirements for Survivor Benefit Plan and Educational Assistance Death Benefits (sections **1.2.8.**; **1.5.1.**; **2.3.2.**). See the last attachment of the publication, IC 2002-1, for the complete IC. A “|” indicates revised material since the last edition.

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Chapter 1

PROGRAM ELEMENTS

1.1. The Line Of Duty (LOD) Determination and Its Objective. A service member who dies or sustains an illness, injury, or disease either while absent from duty, or due to his or her own misconduct, stands to lose substantial government benefits. An LOD determination is a finding made after an investigation into the circumstances of a member's illness, injury, disease or death. The finding concludes (1) whether or not the illness, injury, or disease existed prior to service (EPTS) and if an EPTS condition was aggravated by military service, (2) whether or not the illness, injury, disease, or death occurred while the member was absent from duty and (3) whether or not the illness, injury, disease or death was due to the member's own misconduct. The LOD determination protects the interests of both the member and the United States Government.

1.2. Use of the LOD Determination. An LOD determination may impact the following:

1.2.1. Disability Retirement and Severance Pay. A member's entitlement to disability compensation from the Air Force may be lost or reduced if the disability occurred during a period of unauthorized absence or resulted from the member's own misconduct. (Title 10, U.S.C. 1201, *Regulars and members on active duty for more than 30 days: retirement*; 1203, *Regulars and members on active duty for more than 30 days: separation*; 1204, *Members on active duty for 30 days or less or on inactive-duty training: retirement*; 1206, *Members on active duty for 30 days or less or on inactive-duty training: separation*; and 1207, *Disability from intentional misconduct or willful neglect: separation*).

1.2.2. Forfeiture of Pay. A member may not be entitled to pay if he or she was absent from regular duties for a continuous period of more than one day because of injury or disease that was directly caused by or immediately follows his or her intemperate use of drugs or alcohol. (Title 37, U.S.C. 802, *Forfeiture of pay during absence from duty due to disease from intemperate use of alcohol or drugs*).

1.2.3. Extension of Enlistment. An enlisted member's period of enlistment may be extended to include that period of time he or she was unable to perform duties because of his or her intemperate use of drugs or alcohol. (Title 10, U.S.C. 972, *Members: effect of time lost*).

1.2.4. Veteran Benefits. The Department of Veteran Affairs may use a member's official military records, including an LOD determination, when determining veteran benefits. (Title 38, U.S.C. Section: 1110, *Wartime Disability Compensation, Basic Entitlement*; 1131, *Peacetime Disability Compensation Veterans' Benefits*).

1.2.5. Survivor Benefit Plan. If the member dies on active duty and in the line of duty, a member's surviving dependents may be eligible for benefits under the Survivor Benefit Plan. (Title 10, U.S.C. Section 1448, *Application of Plan*; Section 643 National Defense Authorization Act for Fiscal Year 2002, Public Law 107-107, December 28, 2001).

1.2.6. Medical Benefits for Members of the ARC. ARC Members may be entitled to hospital benefits and medical pensions in certain circumstances. (Title 10, U.S.C. 1074a, *Medical and dental care for members and certain former members*, Title 32, U.S.C. 318 *Compensation for disablement during training*, and Title 37, U.S.C. 204, *Entitlement*).

1.2.7. Incapacitation Pay for ARC Members. ARC members may be entitled to incapacitation benefits in certain circumstances. (Title 37, U.S.C.).

1.2.8. Basic Educational Assistance Death Benefit. Certain survivors of deceased members entitled to basic educational assistance may be entitled to death benefits (Title 37, U.S.C. 3017, *Death Benefit*).

1.3. Limits on Use of an LOD Determination. An LOD determination shall not be used for the following purposes:

1.3.1. Disciplinary Action. The LOD determination is separate and distinct from judicial processes or other disciplinary actions. In some instances it may be appropriate to conduct disciplinary actions simultaneously with the LOD determination.

1.3.2. Reimbursement of Medical Expenses. An active duty member cannot be denied medical treatment based on an LOD determination. An LOD determination does not authorize the United States to recoup the cost of medical care from the active duty member.

1.4. Personnel Who May Be Subject to LOD Determinations.

1.4.1. Active duty Air Force members.

1.4.2. Members of the ARC who die, incur or aggravate an illness, injury, or disease while:

1.4.2.1. On published orders for any period of time, or while on inactive duty.

1.4.2.2. Traveling directly to or from the place the member performs active duty, or inactive duty for training (IDT).

1.4.3. United States Air Force Academy (USAFA) cadets.

1.4.4. Air Force Reserve Officer Training Corps (AFROTC) cadets who die, or incur or aggravate an illness, injury, or disease while performing military training.

1.5. When an LOD Determination is Required. The LOD determination process must be initiated when a member, whether hospitalized or not, has an illness, injury or disease that results in:

1.5.1. The death of a member. In every case where a member dies on active duty, at a minimum, an AF Form 348 must be completed. An administrative determination is not sufficient in a case of death.

1.5.2. The member's inability to perform military duties for more than 24 hours,

1.5.3. The likelihood of a permanent disability, or

1.5.4. Medical treatment of a member of the ARC regardless of the member's ability to perform military duties.

1.5.5. The likelihood of an ARC member applying for incapacitation pay.

1.6. Presumption of LOD Status. An illness, injury, disease or death sustained by a member in an active duty status or in IDT status is presumed to have occurred in the line of duty.

1.7. Rebuttal of LOD Presumption. The presumption that a member's illness, injury, disease or death occurred in the line of duty may be rebutted if:

1.7.1. A medical officer diagnoses that the illness, injury or disease existed prior to service.

1.7.2. A formal investigation determines that the illness, injury, disease or death,

1.7.2.1. Occurred while the member was absent without authority; or

1.7.2.2. Was proximately caused by the member's own misconduct.

1.8. Evidence.

1.8.1. Evidentiary Standard. A preponderance of evidence is required to find that an illness, injury, disease, or death occurred while the member was absent without authority or was due to a member's own misconduct. A preponderance of evidence is the greater weight of credible evidence.

1.8.2. Evidence Considered. When weighing the evidence consider all available evidence including:

1.8.2.1. Direct evidence, i.e., that is based on actual knowledge or observation of witnesses, and

1.8.2.2. 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.

1.8.3. Weighing Evidence. The weight of the evidence is not determined by the number of witnesses or exhibits but by considering all the evidence and evaluating factors such as a witness' behavior, opportunity for knowledge, information possessed, ability to recall and related events and relationship to the matter being considered.

1.9. LOD Determinations. One of the following four findings will be applied to the member's illness, injury, disease or death:

1.9.1. In Line of Duty. The illness, injury, disease or death did not occur while the member was absent without authority and was not due to the member's own misconduct. For ARC members, the illness, injury, disease or its aggravation, or death occurred while the member was in a duty or direct travel status, and was not due to the member's own misconduct.

1.9.2. Existed Prior to Service, EPTS, LOD Not Applicable. A medical diagnosis determined that the death, illness, injury or disease, 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. Further LOD determination is not required.

1.9.3. Not in Line of Duty, Not Due to Own Misconduct. A formal investigation determined that the member's illness, injury, disease, or death occurred while the member was absent from duty.

1.9.4. Not in Line of Duty, Due to Own Misconduct. A formal investigation determined that the member's illness, injury, disease, or death was proximately caused by the member's own misconduct. If the member's illness, injury, disease, or death occurred both while the member was absent from duty and was proximately caused by the member's own misconduct, the case should be finalized as Not in Line of Duty, Due to Own Misconduct.

Chapter 2

LOD DETERMINATION PROCEDURES FOR ACTIVE DUTY MEMBERS

2.1. Processing the LOD Determination for a Member on Active Duty. When processing a Line of Duty Determination for a member on active duty, apply the procedures outlined in this chapter.

2.2. Administering the LOD Determination Process.

2.2.1. Responsibilities in the LOD Determination. Medical Officers, Commanders, and Staff Judge Advocates (SJA) who learn of a member's illness, injury, disease, or death that occurred under circumstances that may warrant an LOD determination shall take an active role in ensuring that a determination is initiated.

2.2.2. The Military Personnel Flight (MPF). The MPF/DPMPE, Career Enhancements, that serves the immediate commander is responsible for directing the LOD determination to the required authorities, monitoring suspenses, and disposing of final documentation.

2.2.3. Prompt and Accurate Processing. The LOD determination must be processed promptly and accurately. Parties shall comply with suspense requirements set out in [Table 2.1](#). Members should not be separated or retired while an LOD determination is pending.

2.3. Medical Officer's Review. The LOD determination process is initiated with a medical officer's review of the member's illness, injury, disease, or death. The medical officer conducting the review should be the medical officer that first provided treatment, or who is assigned nearest to the civilian facility that first provided treatment. He or she will initiate the LOD determination through either an administrative determination or an Air Force Form 348, **Line of Duty Determination**.

2.3.1. Administrative Determination. The medical officer makes the LOD determination with an administrative determination in the following circumstances:

2.3.1.1. When the medical diagnosis is that an illness, injury or disease or the underlying condition causing it, existed prior to entry into military service, or between periods of service, and was not aggravated by service, the medical officer documents this finding in the member's medical records with an entry of "EPTS, LOD Not Applicable."

2.3.1.2. If the illness, injury, disease, or death falls into one of the following conditions, the medical officer makes an administrative determination by finding the member's condition to be in the line of duty. In these instances, the medical officer does not have to make any entries in the member's records or initiate any forms.

2.3.1.2.1. Characterized as a hostile casualty.

2.3.1.2.2. Incurred as a passenger in a common carrier or military aircraft.

2.3.1.2.3. An illness or disease clearly not involving misconduct or caused by abuse of drugs or alcohol.

2.3.1.2.4. A simple injury, such as a sprain, contusion or minor fracture, which is not likely to result in permanent disability.

2.3.1.3. An LOD determination that is processed by an administrative determination is finalized and no further inquiry is required.

2.3.2. AF Form 348, Initiating an Informal Determination. If an LOD determination is required, but an administrative determination is not appropriate, the medical officer initiates AF Form 348. An Informal LOD must be initiated on AF Form 348 in every case of a member dying on active duty. The medical officer provides a narrative description of the member's medical condition but does not make an LOD determination. See [Attachment 2](#), Instructions, AF Form 348.

2.3.2.1. Documentation. The medical officer processes and signs the AF Form 348 and forwards it to the Line of Duty-Medical Focal Point (LOD-MFP). The LOD-MFP distributes the AF Form 348 as follows:

2.3.2.1.1. Send the original for further processing to the member's immediate commander through the MPF/DPMPE serving the member's immediate commander,

2.3.2.1.2. File one copy in the member's medical record, and

2.3.2.1.3. File one copy in the LOD-MFP Office.

2.4. Commander's Review. Use [Table 2.2](#). to determine who is the immediate commander for purposes of the LOD determination.

2.4.1. *Informal Determination.* The commander will process the LOD determination as an informal determination unless a formal determination is required by paragraph [2.5.2](#). An Informal Determination is processed completely on AF Form 348. See [Table 2.3](#)., Overview of Informal Determination Process.

2.4.1.1. The commander investigates the circumstances of the case to determine if the member's illness, injury, disease or death:

2.4.1.1.1. Occurred while the member was absent without authority, or

2.4.1.1.2. Is due to the member's own misconduct.

2.4.1.2. If a preponderance of evidence does not support either of these circumstances, the commander finds the illness, injury, disease or death to be "In the Line of Duty." He or she indicates this on the AF Form 348. See [Attachment 2](#), Instructions, AF Form 348.

2.4.2. *Formal Determination.* A formal determination is made by higher authorities based upon a thorough investigation conducted by a specially appointed investigating officer. DD Form 261, **Report of Investigation, Line of Duty and Misconduct Status**, is used to supplement AF Form 348. See [Table 2.4](#)., Overview of Informal Determination Process. If a formal determination is required, or if the commander believes an investigation should be conducted into the circumstances of member's illness, injury, disease or death, he or she recommends such on AF Form 348. See [Attachment 2](#), Instructions, AF Form 348.

2.4.2.1. When Required. A formal determination is required to support a determination of "Not in Line of Duty." Also, the immediate commander will recommend a formal determination when the member's illness, injury, disease, or death apparently occurred:

2.4.2.1.1. Under strange or doubtful circumstances, or due to the member's misconduct or willful negligence,

2.4.2.1.2. While the member was absent without authority, or

2.4.2.1.3. Under circumstances the commander believes should be fully investigated.

2.4.3. Documentation. The commander forwards AF Form 348 to the SJA for review for legal sufficiency.

2.5. Staff Judge Advocate Review. The SJA reviews the commander's recommendation for legal sufficiency.

2.5.1. If the SJA concurs with the commander's recommended finding of "In the Line of Duty," the LOD determination is complete.

2.5.1.1. Forward the finalized documentation to MPF/DPMPE.

2.5.2. If the SJA nonconcurs with the commander's finding of "In the Line of Duty," he or she indicates such on AF Form 348, and forwards it to the appointing authority.

2.5.3. If the SJA concurs or nonconcurs with the commander's recommendation for an investigation, he or she indicates such on AF Form 348, and forwards it to the appointing authority.

2.5.4. If a formal determination is initiated, the SJA serves as a legal advisor to the investigating officer. The SJA will review the investigating officer's findings and recommendations for legal sufficiency.

2.6. The Appointing Authority. Use [Table 2.2.](#) to determine who is the appointing authority.

2.6.1. If the appointing authority concurs with the commander and not the SJA, and finds the member's illness, injury, disease, or death was "In the Line of Duty," the case is complete.

2.6.1.1. Forward the finalized AF Form 348 to MPF/DPMPE.

2.6.2. Appoint Investigating Officer. Otherwise, the appointing authority appoints an investigating officer (IO) to investigate the circumstances surrounding the member's illness, injury, disease, or death.

2.6.2.1. Appoint the investigating officer in writing, cite this instruction as authority, state the reason for the appointment and designate a suspense date for submission of the report.

2.6.2.2. The investigating officer should be a disinterested officer in the grade of captain or above, and senior to the member being investigated. If the IO cannot meet these criteria, include a memo in the case file justifying the IO's appointment.

2.6.2.3. When an incident occurs at a location remote from the appointing authority, coordinate with the commander of the installation nearest to where the incident occurred to appoint an investigating officer.

2.7. Investigating Officer. The Investigating Officer conducts the investigation in accordance with the rules set out in [Attachment 3](#), Guide for Investigating Officers.

2.7.1. After completing the investigation, the IO obtains a legal review from the SJA and then forwards the investigation report and its supporting attachments to the appointing authority.

2.8. The Appointing Authority. The appointing authority reviews the complete investigation file. The appointing authority may

- 2.8.1. Return the file to the IO for further investigation, or
- 2.8.2. Complete DD Form 261, Block 13, and if applicable Block 19. Forward the file to the reviewing authority.

2.9. The Reviewing Authority. Use [Table 2.2](#). to determine who is the reviewing authority. The reviewing authority reviews the complete investigation file. He or she may

- 2.9.1. Return the file to the IO for further investigation, or
- 2.9.2. Complete DD Form 261, Block 14, and if applicable Block 20. **NOTE:** Base approval or disapproval on the preceding finding of the appointing authority.
- 2.9.3. If the reviewing authority is also the approving authority, note this in Block 15 of DD Form 261. The determination is finalized.
 - 2.9.3.1. Return the complete file to the immediate commander.
- 2.9.4. If the reviewing authority is not also the approving authority, forward the file to the approving authority.

2.10. The Approving Authority. Use [Table 2.2](#). to determine who is the approving authority. The approving authority reviews the complete investigation file. He or she may

- 2.10.1. Return the file to the IO for further investigation, or
- 2.10.2. Approve a final determination by completing DD Form 261, Block 15 and if applicable Block 21. **NOTE:** Base approval or disapproval on the preceding finding of the appointing authority.
 - 2.10.2.1. Return the complete file to the immediate commander.

2.11. The Immediate Commander. Upon receipt of the final determination, the immediate commander:

- 2.11.1. Notifies the member or the member's next of kin of a determination of "Not In the Line of Duty" and the requirements to request reconsideration. The commander attaches a copy of the investigation to the notification. Member is not to be given a copy of any legal reviews of the LOD determination. See [Attachment 6](#), Sample Format of Member Notification of NLOD Determination, and [Attachment 7](#), Sample Format of Notification of NLOD Determination in Death Cases.
- 2.11.2. Initiates a Duty Status Change, AF Form 2098, **Duty Status Change**, if the determination concludes the member was absent without authority.
- 2.11.3. Forwards the case to MPF/DPMPE for final disposition of records.

2.12. The MPF/DPMP. The MPF/DPMPE disposes of the documentation as follows:

- 2.12.1. Formal LOD determinations.
 - 2.12.1.1. Forward the original complete copy of all formal determinations, including the DD Form 261, AF Form 348, the investigating officer's report, supporting attachments and the legal reviews to HQ AFPC/JA, 550 C Street West Suite 44, Randolph AFB TX 78150-4746.

2.12.1.2. Forward a copy of the DD Form 261 and the AF Form 348 to the Medical Facility's Line of Duty - Medical Focal Point, for inclusion in the member's medical records.

2.12.2. Informal LOD determinations.

2.12.2.1. Forward the original copy of the AF Form 348 to HQ AFPC Micrographics System Branch (HQ AFPC/DPSAM1), 550 C Street West Suite 21, Randolph AFB TX 78150-4723 for inclusion in the member's permanent personnel record.

2.12.2.2. Forward a copy of the AF Form 348 to the servicing Medical Facility's Line of Duty - Medical Focal Point, for inclusion in the member's medical records.

2.13. HQ AFPC/JA. Review complete formal determination for legal sufficiency and then forward to HQ AFPC/DPSAM1 for inclusion in the member's permanent personnel record.

Table 2.1. Goals for Completing Line of Duty Determinations.

Action Agency	Action Completed Within
Air Force Medical Officer	4 workdays
LOD-MFP	1 workday
MPF/DPMPE	1 workday
Immediate Commander	4 workdays
Staff Judge Advocate	4 workdays
Appointing Authority	4 workdays
Investigating Officer	14 workdays
Staff Judge Advocate	4 workdays
Appointing Authority	4 workdays
Reviewing Authority	4 workdays
Approving Authority	4 workdays
Immediate Commander	4 workdays
MPF/DPMPE	1 workday

Table 2.2. Commander, Appointing Authority, Reviewing Authority, and Approving Authority for Various Personnel.

Members and Units Assigned	Immediate Commander	Appointing Authority	Reviewing Authority	Approving Authority
Active Duty	Commander at lowest level unit member is assigned to	Group commander in chain of command over the immediate commander	Next immediate commander in the chain of command over the appointing authority	Officers who exercises special court-martial jurisdiction over reviewing authority
AFROTC cadets	AFROTC Detachment Commander	AFROTC Regional Commander	AFROTC Commander	AFROTC Commander

Table 2.3. Overview of Informal Determination Process.

If the Commander's Recommendation Is	If SJA's Recommendation Is	And Appointing Authority	Then
In Line of Duty	Concur	N/A	Case is Finalized
In Line of Duty	Nonconcur	Finds In Line of Duty	Case is Finalized
In Line of Duty	Nonconcur	Appoint IO	Formal Determination Process Initiated
Not in Line of Duty	Concurs	Appoints IO	Investigation is Begun
Not in Line of Duty	Nonconcur	Finds In Line of Duty	Case is Finalized
Not in Line of Duty	Nonconcur	Appoints IO	Formal Determination Process Initiated

Table 2.4. Overview of Formal Determination Process.

If IO recommends finding that injury or disease occurred	Appointing Authority	Reviewing Authority, Who is Not Also Approving Authority,	Reviewing Authority, Who is Also Approving Authority,	Approving Authority
In Line of Duty, Or Not In Line of Duty.	Can return case for more investigation; or Recommend approval or disapproval, and forward to reviewing authority.	Can return case for more investigation; or Recommend approval or disapproval, and forward to approving authority.	Can return case for more investigation; or approves or disapproves. Case is finalized.	Can return case for more investigation; or approves or disapproves. Case is finalized.

Chapter 3

LOD DETERMINATION PROCEDURES FOR MEMBERS OF THE AIR RESERVE COMPONENT

3.1. ARC Procedures. This chapter governs the processing of LOD determinations for members of the Air Reserve Component. This includes members of the Air Force Reserve and members of the Air National Guard.

3.2. Prompt and Accurate Processing . An LOD must be completed promptly, as the determination will impact the member's eligibility to benefits, such as military medical care and incapacitation pay. Members should not be separated or retired while an LOD determination is pending.

3.3. Responsibilities in the LOD Determination. Medical Officers, Commanders, SJAs and Air Staff members who learn of a member's illness, injury, disease or death that occurred under circumstances that may warrant an LOD determination shall take an active role in ensuring that a determination is initiated and completed in a timely manner.

3.3.1. Individual Mobilization Augmentees (IMA) and Participating Individual Ready Reservists (PIRR) are processed by the active duty command to which they are assigned or attached. When an IMA or PIRR member dies or incurs an illness, injury, or disease that warrants an LOD determination, the active duty command should contact HQ ARPC/DPSSP, 6760 E Irvington Pl #4000, Denver CO, 80280-4000, for administrative oversight. Use **Table 3.1.** through **Table 3.4.** to determine who is responsible for reviewing the LOD determination for an IMA or PIRR. Upon completion of an LOD determination for an IMA or PIRR, forward the file to HQ ARPC/DPSSP, 6760 E Irvington Pl #4000, Denver, CO 80280-4000.

3.3.2. The Military Personnel Flight. The ARC MPF has overall responsibility for the management and processing of LOD determinations as outlined in this instruction.

3.3.3. For non-participating reservists assigned to the Individual Ready Reserve ordered to perform muster duty, an LOD will be accomplished at the nearest military medical facility. The AF Form 348 and all medical documents will be forwarded to HQ ARPC/DPSSP for processing.

3.3.4. ARC Medical Unit. The ARC medical unit is responsible for ensuring that the LOD process is initiated. This responsibility includes initiating the AF Form 348 or making an administrative LOD determination as appropriate when neither has been accomplished by the initial treating military medical facility (MTF).

3.4. Military Medical Officer's Review. The LOD determination process is initiated with a military medical officer's review of the member's illness, injury, disease, death or the underlying condition causing it. The military medical officer conducting the review should be the medical officer that first provided treatment, or who is assigned nearest to the civilian facility that first provided treatment. He or she will initiate the LOD process through either an administrative entry in the patient's medical record or an Air Force Form 348.

3.4.1. Existed Prior to Service. The military medical officer must determine whether the illness, injury, or disease or the underlying condition causing it, existed prior to the period of service in which the member exhibited symptoms.

3.4.1.1. A clear distinction between the symptoms and the actual medical condition causing the symptoms is crucial in making an EPTS determination. An LOD determination is based upon the onset of the disease, illness or injury process, not the existence of symptoms. EPTS conditions include chronic disease, illnesses, injuries and illnesses or disease with an incubation period that would rule out a finding that they were incurred during periods of active duty (AD), active duty for training (ADT), or IDT.

3.4.1.2. Aggravation by Military Service. If the determination is the medical condition existed prior to service, then the military medical officer must determine whether the condition has been aggravated by military service (i.e., the member had a preexisting condition documented in their medical record and was allowed to perform duty).

3.4.1.2.1. If the condition has been aggravated by military service, an AF Form 348 must be initiated.

3.4.1.2.2. If the condition has not been aggravated by military service, the medical officer documents this finding in the member's medical records with an entry of "EPTS, LOD Not Applicable." When the member has a condition that is EPTS and not aggravated by service, only the initial treatment is covered by the military.

3.4.2. Administrative Determination. The medical officer may make an administrative determination to document a medical condition that is EPTS and not service aggravated or a minor in line of duty condition if there is no likelihood of permanent disability, hospitalization, requirement for continuing medical treatments, or a request for incapacitation pay. The military medical officer makes an administrative determination by finding the member's condition to be in the line of duty and noting this with an entry in the member's medical record. If an administrative determination is made, no further action is required.

3.4.2.1. An Informal Line of Duty, AF Form 348, rather than an administrative, must be initiated for the following cases:

3.4.2.1.1. When there is a likelihood an ARC member may apply for incapacitation pay.

3.4.2.1.2. When the case involves service aggravated EPTS medical conditions.

3.4.2.1.3. When the medical condition involves a disease process such as coronary artery disease, cancer, diabetes mellitus, etc. or,

3.4.2.1.4. All cardiac conditions, including heart attacks, rhythm disturbances, etc.

3.4.2.1.5. When the member has been hospitalized.

3.4.2.1.6. When the member requires continuing medical treatment or treatment in a civilian hospital.

3.4.3. Informal LOD Determination - AF Form 348. If an LOD determination is required, but an administrative determination is not appropriate, the military medical officer initiates an informal Line of Duty Determination by completing the medical portion of the AF Form 348. The medical officer provides a narrative description of the member's medical condition, signs the form, but does not make an LOD determination. See [Attachment 2](#), Instructions, AF Form 348 and [Attachment 5](#), LOD Determinations for Various Situations.

3.4.3.1. Disposition of Documentation. The ARC medical unit is responsible for forwarding the original AF Form 348 to the ARC/MPF. The ARC medical unit files the interim or finalized copy from the ARC/MPF in the member's medical records and destroys the incomplete form. The finalized AF Form 348 replaces the interim AF Form 348 for filing in the member's medical records.

3.5. Immediate Commander's Review. Use [Table 3.1](#) to determine who is the immediate commander for purposes of the LOD determination.

3.5.1. Interim Line of Duty Determination. The immediate commander may request the appointing authority issue an interim LOD determination if the informal or formal determination cannot be finalized within 7 days of notification, and it is possible the member requires continuing medical care or is entitled to incapacitation benefits. Do not make an interim LOD if there is clear and convincing evidence showing an EPTS condition or it appears that misconduct was the proximate cause of the illness, injury or disease.

3.5.1.1. The interim LOD is comprised of the completed medical portion of AF Form 348 which must contain a description of the member's illness, injury or disease, and the date it occurred, the commander's preliminary finding of the member's military status at the time the medical condition occurred, as well as the commander's signature. When requesting approval of an interim LOD the commander should explain the member's current military status and the reason for delay in processing the LOD determination.

3.5.1.2. The ARC/MPF forwards a copy of the approved interim LOD to the ARC medical unit for filing in the member's medical record and to ensure no disruption in the member's medical care.

3.5.2. Informal Determination. The commander will process the LOD determination as an informal determination unless a formal determination is required by paragraph [3.5.3.1](#).

3.5.2.1. The commander investigates the circumstances of the case to determine if the member's injury, illness, disease, or cause of death:

3.5.2.1.1. Occurred while the member was absent without authority,

3.5.2.1.2. Was due to the member's own misconduct, or

3.5.2.1.3. Existed prior to the period of military service the member was performing at the time symptoms were exhibited and, if so, whether or not the medical condition was service aggravated.

3.5.2.2. If a preponderance of evidence does not support any of these circumstances, the commander finds the illness, injury, disease or death to be "In the Line of Duty." He or she indicates this on the AF Form 348. See [Attachment 2](#), Instructions, AF Form 348.

3.5.3. Formal Determination. A Formal Determination is made by higher authorities based upon a thorough investigation conducted by a specially appointed investigating officer. DD Form 261, is used to supplement AF Form 348. If a formal determination is required, or if the commander believes an investigation should be conducted into the circumstances of member's illness, injury disease, or death, the commander recommends on the AF Form 348 that an investigation be conducted. See [Attachment 2](#), Instructions, AF Form 348.

3.5.3.1. When Required. A formal determination is required to support a determination of “Not in Line of Duty.” Also, the immediate commander will recommend a formal determination when the member’s illness, injury, disease or death apparently occurred:

3.5.3.1.1. When directed by the reviewing or higher authority.

3.5.3.1.2. Under strange or doubtful circumstances, or due to the member’s misconduct or willful negligence.

3.5.3.1.3. While the member was absent without authority, or

3.5.3.1.4. Under circumstances the commander believes should be fully investigated.

3.5.4. Disposition of Documentation. The commander forwards AF Form 348 to the SJA.

3.6. Staff Judge Advocate Review. The SJA reviews the commander’s recommendation for legal sufficiency.

3.6.1. The SJA either concurs or nonconcurrs with the commander’s finding on AF Form 348 and forwards it to the appointing authority.

3.6.2. If a formal determination is initiated, the SJA serves as a legal advisor to the investigating officer. The SJA will review the investigating officer’s findings and recommendations for legal sufficiency.

3.7. The Appointing Authority. Use [Table 3.3.](#) to determine who is the appointing authority.

3.7.1. Interim LOD. The appointing authority approves or disapproves the commander’s request for an interim LOD determination.

3.7.1.1. Forward approved memorandum by fax to ARC/DP with other required documents, for a control number.

3.7.2. Informal LOD. If the appointing authority finds the member’s illness, injury, disease or death to be “In the Line of Duty,” he or she indicates such on Air Force Form 348. This Informal LOD Determination is then forwarded for disposition as outlined in paragraph [3.12.1.1.](#)

3.7.3. Initiating a Formal LOD Determination. If the appointing authority determines the case should be investigated, he or she appoints an IO to conduct an investigation of the circumstances surrounding the member’s illness, injury, disease or death. This case is now processed as a Formal LOD Determination.

3.7.3.1. Appoint the investigating officer in writing, cite this instruction as authority, state the reason for the appointment and designate a suspense date for submission of the report.

3.7.3.2. The investigating officer should be a disinterested officer in the grade of captain or above, and senior to the member being investigated. If the IO cannot meet these criteria, include a memo in the case file justifying the IO’s appointment.

3.7.3.3. When an incident occurs at a location remote from the appointing authority, coordinate with the commander of the installation nearest to where the incident occurred to appoint an investigating officer.

3.8. Investigating Officer. The investigating officer conducts the investigation in accordance with the rules set out in [Attachment 3](#), Guide for Investigating Officers.

3.8.1. After completing the investigation, the IO obtains a legal review from the SJA and then forwards the investigation report and its supporting attachments to the appointing authority.

3.9. The Appointing Authority. The appointing authority reviews the complete investigation file. The appointing authority may

3.9.1. Return the file to the IO for further investigation, or

3.9.2. Complete DD Form 261, Block 13, and if applicable Block 19. Forward the file to the reviewing authority.

3.10. The Reviewing Authority. Use [Table 3.4](#). to determine who is the reviewing authority. The reviewing authority reviews the complete investigation file. He or she may

3.10.1. Return the file to the IO for further investigation, or

3.10.2. Complete DD Form 261, Block 14, and if applicable Block 20. **NOTE:** Base approval or disapproval on the preceding finding of the appointing authority.

3.10.2.1. If the reviewing authority is also the approving authority, note this in block 15 of DD Form 261. Forward the case to the Career Enhancements Actions branch of the MPF serving the immediate commander.

3.10.2.2. If the reviewing authority is not also the approving authority, forward the file to the approving authority.

3.11. The Approving Authority. Use table 3.5. to determine who is the approving authority. The approving authority reviews the complete investigation file. He or she may

3.11.1. Return the file to the IO for further investigation, or

3.11.2. Approve a final determination.

3.11.2.1. Forward the file to HQ ARC/DP for distribution.

3.12. ARC/MPF. ARC/MPF disposes of LOD determinations as follows:

3.12.1. Informal LOD determinations.

3.12.1.1. Cases finalized at the Wing (Appointing Authority) level. Informal determinations are finalized at the Wing level if they do not involve “questionable circumstances.” Forward those cases as follows:

3.12.1.1.1. Forward original AF Form 348 for filing in the member’s master personnel records group (MperRGP).

3.12.1.1.2. Forward a copy of the AF Form 348 to the member’s immediate commander.

3.12.1.1.3. Forward a copy to the ARC medical unit for filing in the member’s medical records.

3.12.1.2. Cases finalized at the HQ ARC (Approving Authority) level. Forward cases involving questionable circumstances to HQ ARC/DP. These cases are not considered finalized until they have been reviewed and approved by the ARC approving authority.

3.12.1.3. "Questionable circumstances" include, but are not limited to:

3.12.1.3.1. Misconduct, incidents involving alcohol or drugs, travel to or from active duty tour or inactive duty training, athletic events before or after IDT periods, and on-base injuries occurring before or after IDT periods.

3.12.1.3.2. Cases involving EPTS medical conditions that involve service aggravation; medical conditions involving disease process (such as coronary artery disease, cancer, diabetes mellitus, etc.); all cardiac conditions (such as heart attacks, rhythms disturbances, etc.)

3.12.1.3.3. Attach the following documents to the AF Form 348, supporting medical documentation, orders or documentation verifying member's status, police accident report, map showing point of origin, point of accident and destination for injuries received while traveling to or from a tour of AD or IDT.

3.12.2. Formal LOD determinations.

3.12.2.1. Forward all formal LOD determination case files to HQ ARC/DP.

3.13. HQ ARC Review.

3.13.1. HQ ARC/DP shall review all formal LOD determinations and those informal LOD determinations with 'questionable circumstances'. It will coordinate review within HQ ARC as it deems appropriate.

3.13.1.1. The ARC appointing authority or designated representatives may return an informal determination to the appointing authority with direction to conduct a formal investigation.

3.13.1.2. HQ ARC/SG may make an administrative determination when the documentation is available to support the decision, and neither an informal or formal LOD investigation has been initiated. The HQ ARC/SG will request a formal or informal LOD investigation when in disagreement with an administrative determination made by the medical officer.

3.13.1.3. HQ ARC/DP will forward finalized LOD determination as follows:

3.13.1.3.1. Forward original AF Form 348 for filing in the member's MperRGP.

3.13.1.3.2. Forward a copy of the AF Form 348 to the member's servicing MPF.

3.13.1.3.3. Forward a copy to the ARC medical unit for filing in the member's medical records.

3.14. Notification to Member. The ARC/MPF will provide the member with a copy of the LOD determination and the investigation. Member is not to be given a copy of any legal reviews of the LOD determination. Advise the member of the process of applying for reconsideration of the LOD determination. See [Attachment 6](#), Sample Format of Member Notification of NLOD Determination, and [Attachment 7](#), Sample Format of Notification of NLOD Determination in Death Cases.

Table 3.1. Determining Immediate Commander for LOD Purposes.

Member and Unit of Assignment	Immediate Commander
All AFRC members, assigned to or training with AFRC units	AFRC unit commander or senior AFRC commander present
Individual Mobilization Augmentee and Participating Individual Ready Reservists	Unit commander where member is performing duty
ANG members assigned to ANG units who are serving or training in the CONUS	Immediate ANG commander or senior commander present
ANG members assigned to an ANG unit who are serving or training outside the CONUS	Immediate ANG commander or senior commander present

Table 3.2. Determining Appointing Authority for LOD Purposes.

Member and Unit of Assignment	Immediate Commander
All AFRC members, assigned to or training with AFRC units	Senior AFRC commander present (see note)
Individual Mobilization Augmentee and Participating Individual Ready Reservists	Group commander in chain of command over the immediate commander
ANG members assigned to ANG units who are serving or training in the CONUS	Senior commander present
ANG members assigned to an ANG unit who are serving or training outside the CONUS	Senior commander present

NOTE: The appointing authority may act as the immediate commander for AFRC members.

Table 3.3. Determining Reviewing Authority for LOD Purposes.

Member and Unit of Assignment	Immediate Commander
All AFRC members, assigned to or training with AFRC units	Senior AFRC commander present
Individual Mobilization Augmentee and Participating Individual Ready Reservists	Next immediate commander in the chain of command over the appointing authority
ANG members assigned to ANG units who are serving or training in the CONUS	Senior commander present
ANG members assigned to an ANG unit who are serving or training outside the CONUS	Senior commander present

Table 3.4. Determining Approving Authority for LOD Purposes.

Member and Unit of Assignment	Immediate Commander
All AFRC members, assigned to or training with AFRC units	AFRC/ACV
Individual Mobilization Augmentee and Participating Individual Ready Reservists	Officer who exercises special court-martial jurisdiction over reviewing authority
ANG members assigned to ANG units who are serving or training in the CONUS	Adjutant/Commanding General
ANG members assigned to an ANG unit who are serving or training outside the CONUS	Adjutant/Commanding General

Chapter 4

REINVESTIGATION OF FINAL DETERMINATION

4.1. Basis for Reinvestigation. A final LOD determination may be opened for reinvestigation only if new and significant evidence indicates a likelihood of error. The reinvestigation may be limited to address only those issues raised by new evidence.

4.2. Initiating Reinvestigation.

4.2.1. The appointing authority or higher authority, including HQ AFPC/JA, may direct a reinvestigation of a final determination.

4.2.2. The subject or the next of kin of the subject of a final LOD determination may request reinvestigation of a final determination. To do so the member must

4.2.2.1. Within 45 days of receipt of a copy of the final determination, make a written application to the appointing authority who directed the first investigation,

4.2.2.2. Attach the new and significant evidence to the member's copy of the final determination, and

4.2.2.3. Send a copy of this package to the MPF/DPMSC that processed the first LOD determination.

4.3. Processing a Request for Reinvestigation.

4.3.1. Denying a request for reinvestigation. Only the approving authority may deny a request for reinvestigation.

4.3.2. The MPF forwards the package requesting reinvestigation to the appointing authority.

4.3.3. The appointing authority may either:

4.3.3.1. Grant the request and direct reinvestigation, or

4.3.3.2. Forward the case to the reviewing authority, with the recommendation the request be denied.

4.3.4. The reviewing authority may either:

4.3.4.1. Grant the request and direct the appointing authority to reinvestigate the case, or,

4.3.4.2. Forward the case to the approving authority with the recommendation that the request be denied.

4.3.5. The approving authority may either:

4.3.5.1. Grant the request and direct the appointing authority to reinvestigate the case, or

4.3.5.2. Deny the request. Notify the member that the request is denied. Return the package requesting reconsideration to the member.

4.4. Conducting the Reinvestigation.

4.4.1. If reinvestigation has been directed, the appointing authority directs the IO to reinvestigate the case. The appointing authority may appoint a new investigating officer if necessary.

4.4.2. The IO ensures he or she has the complete file of the original investigation and the request package with its new evidence.

4.4.3. The reinvestigation is conducted under the same procedures used for an initial investigation. It is processed on a second DD Form 261. The IO prepares an addendum to the original IO summary. The addendum should address the new evidence and its impact on the case. The IO may render a new recommended finding if necessary.

4.4.4. The approving authority takes final action on the reinvestigation on the second DD Form 261.

4.5. Documentation of Reinvestigation.

4.5.1. When the final determination of reinvestigation reaffirms the first finding, MPF/DPMP disposes of the documentation as shown in paragraph [2.12.1.](#) or [3.12.2.](#), whichever is applicable. Forward a copy of the finalized second DD Form 261 to the member.

4.5.2. When the final determination of reinvestigation changes a prior finding of In Line of Duty to an adverse determination, MPF/DPMSC disposes of the documentation as shown in paragraph [2.12.1.](#) or [3.12.2.](#), whichever is applicable. Forwards a copy of the finalized second DD Form 261 to the member.

4.5.3. When the final determination of the reinvestigation changes an adverse finding to an In the Line of Duty finding, MPF/DPMSC makes certain the previous record entry is corrected. It forwards a copy of the finalized second DD Form 261 to the member.

4.6. Prescribed Form. AF Form 348, Line of Duty Determination.

RICHARD E. BROWN III, Lt General, USAF
DCS/Personnel

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

Executive Order 9397, *Numbering System for Federal Accounts Relating to Individual Persons*
Title 10, United States Code, *Armed Forces*, Section: 972, *Members: Effects of Time Lost*; 1074a, *Medical and Dental Care: Members on Duty Other Than Active Duty for a Period of More Than 30 Days*; 1201, *Regulars and members on active duty for more than 30 days: retirement*; 1203 *Regulars and members on active duty for more than 30 days: separation*; 1204, *Members on active duty for 30 days or less or on inactive-duty training: retirement*; 1206, *Members on active duty for 30 days or less or on inactive-duty training: separation*; 1207, *Disability from intentional misconduct or willful neglect: separation*; and 1448, *Application of Plan*).

Title 21, United States Code, *Food and Drugs*, Section: 812, *Schedules of controlled substances*.

Title 32, United States Code, *National Guard*, Section: 318 *Compensation for disablement during training*,

Title 37, United States Code, *Pay and Allowances of the Uniformed Services*, Section: 204, *Entitlements*; 802, *Forfeiture of Pay During Absence from Duty Due to Disease from Intemperate Use of Alcohol or Drugs*; Section 3017, *Death Benefit*

Title 38, United States Code, *Veteran's Benefits*, Section: 1110, *Wartime Disability Compensation, Basic Entitlement*; 1131, *Peacetime Disability Compensation*

National Defense Authorization Act for Fiscal Year 2002, (Public Law 107-107), December 28, 2001, Section: 642, *Survivor Benefit Plan Annuities for Surviving Spouses of Members Who Die While on Active Duty and Not Eligible for Retirement*

AFPD 36-29, *Military Standards*

AFI 33-332, *Air Force Privacy Act Program*

AFI 37-139, *Records Disposition Schedule*

Abbreviations and Acronyms

AD—Active Duty

ADT—Active Duty for Training

AFI—Air Force Instruction

AFPD—Air Force Policy Directive

AFRC—Air Force Reserve Command

AFROTC—Air Force Reserve Officer Training Corps

ANG—Air National Guard

ARC—Air Reserve Component

EAD—Extended Active Duty

EO—Executive Order
EPTS—Existed Prior to Service
HQ AFPC—Headquarters Air Force Personnel Center
HQ ARPC—Headquarters Air Reserve Personnel Center
HQ AFRC—Headquarters Air Force Reserve Command
IDT—Inactive Duty for Training
IMA—Individual Mobilization Augmentee
IO—Investigating Officer
LOD—Line of Duty
LOD—MFP-Line of Duty Medical Focal Point
MperGp—Master Personnel Records Group
MPF—Military Personnel Flight
MTF—Military Training Flight
OSI—Office of Special Investigation
PIRR—Participating Individual Ready Reservists
SJA—Staff Judge Advocate
UCMJ—Uniform Code of Military Justice
USAFA—United States Air Force Academy
USAFR—United States Air Force Reserve

Terms

Active Duty—Full-time duty in the active military of the United States. A general term applied to all active military service with the active force without regard to duration or purpose.

Active Duty for Training (ADT)—A tour of active duty that is used for training members of the Reserve components to provide trained units and qualified persons to fill the needs of the Armed Forces in time of war or national emergency and such other times as the national security requires. The member is under orders that provide for return to nonactive status when the period of ADT is completed. It includes annual training, special tours of ADT, school tours, and the initial duty for training performed by nonprior service enlistees.

Absent Without Authority—Consider member “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 doing a specified task at a specified time and place for a specified purpose. It is not the same as regularly scheduled duty. Consider the member “absent without authority” if not excused and absent from duty in civil confinement for more than 24 hours. The term “absent without authority” is the same as “unauthorized absence.”

Administrative Determination—A determination by a medical officer that a member’s death, illness, injury or disease occurred in the line of duty. This process can be used for only a limited number of

instances including battle casualties, disease of natural origin, simple injury and conditions that existed prior to service.

Alcohol Abuse—The illegal or improper use or possession of alcohol, on or off duty, that results in, but is not limited to, impaired duty performance, intoxicated driving, domestic disturbances, assault, aberrant behavior, altercations, underage drinking, or other behavior inconsistent with Air Force standards.

Alcoholism—A psychological or physical dependence on alcohol.

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.

Drug Abuse—The illegal or improper use, possession, sale, transfer, or trafficking of any controlled substance included in Schedules I, II, III, IV, and V in Title 21, United States Code, Section 812, drug abuse paraphernalia, or any intoxicating substance, other than alcohol, that is inhaled, injected, consumed, or introduced into the body in any manner to alter mood or function.

Drugs—Any controlled substance included in Schedules I, II, III, IV, and V in 21 U.S.C. 812, including anabolic or androgenic steroids, or any intoxicating substance other than alcohol, that is inhaled, injected, consumed, or introduced into the body in any manner to alter mood or function.

Existed Prior to Service (EPTS)—Terms added to a medical diagnosis where there is clear evidence that a illness, injury, or disease, the underlying condition causing it, existed before the member's entry into military 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.

Hostile Casualty—A person who is the victim of a terrorist activity or who becomes a casualty "in action."

Inactive Duty Training (IDT)—Authorized training performed by a member of a Reserve Component not on active duty or active duty for training and consisting of regularly scheduled unit training assemblies, additional training assemblies, periods of appropriate duty or equivalent training, and any special additional duties authorized for Reserve Component personnel by the Secretary concerned, and performed by them in connection with the prescribed activities of the organization in which they are assigned with or without pay. Does not include work or study associated with correspondence course. Also called **IDT**.

Incapacitation Benefits—Entitlement for Reserve members to compensation for incapacitation or loss of civilian earnings as a result of an injury, illness or disease incurred or aggravated in the line of duty.

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 poisoning (except those due to contaminated food) resulting from exposure to toxic or poisonous substances are also injuries.

Intoxication—Maladaptive behavior such as aggressiveness, impaired judgment, and impaired social or occupational functioning, because of recent ingestion, inhalation, or injection of any substance into the body. Signs include flushed face, slurred speech, unsteady gait, lack of coordination, impaired attention, irritability, euphoria or depression.

In Line of Duty—A death, illness, injury or disease suffered by a member is presumed to be in the line of

duty, unless a preponderance of the evidence supports the finding that the member's death, illness, injury, or disease happened while the member was absent from duty without leave or due to the member's own misconduct. Confine the meaning of "line of duty" in this instruction to the purpose of this instruction. It is completely distinct from usage under the Federal Tort Claims Act, Title 28, U.S.C., Section 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.

Intentional Conduct—An act, by commission or omission, done on purpose.

Intervening Cause—An independent action occurring between the original wrongful act or omission and the death, illness, injury or disease, that turns aside the natural sequence of events, and produces a result which would not otherwise have followed and been foreseeable.

Lost Time—Time (if more than 24 hours) which must be made up (served) by an enlisted member who is unable to perform military duties because of intemperate use of drugs or alcohol, or because of illness, injury or disease resulting from misconduct.

Mental Responsibility—The capacity to understand when ones conduct is wrong and to conform ones conduct to the requirement of the law. All members are presumed mentally responsible for their acts, unless there is contrary evidence. This presumption usually means it is unnecessary to pursue the issue of mental responsibility unless there is credible evidence of lack of mental responsibility. Such evidence may consist of the circumstances surrounding the death, illness, injury or disease, previous abnormal or irrational behavior, expert opinion, or other evidence directly or indirectly pointing toward lack of mental responsibility. Members are not responsible for their misconduct and its foreseeable consequence if, as a result of mental disease or defect, they lack substantial capacity either to appreciate that their conduct is wrong or to conform the conduct to the requirements of law. The term "mental disease or defect" does not include an abnormality manifested only by repeated wrongful or otherwise antisocial behavior. Members with impaired mental faculties as a result of their own prior misconduct, such as by taking a hallucinogen, other illegal (controlled) substance, or deliberately ingesting any harmful/dangerous substance, are mentally responsible.

Misconduct—Intentional conduct that is wrongful or improper. Also, willful neglect or gross negligence.

Not in Line of Duty, Due to Own Misconduct—A determination supported by a preponderance of the evidence that the member's death, illness, injury or disease, was proximately caused by the member's own misconduct, regardless of whether the member was absent without authority.

Not in Line of Duty, Not Due to Own Misconduct—A determination supported by a preponderance of the evidence that the member's death, illness, injury or disease happened while the member was absent without authority, and the death, illness, injury, or disease was not proximately caused by the member's own misconduct.

Proximate Cause—It is the cause that, in a natural and continuous sequence unbroken by an independent and unforeseeable new cause, results in the death, illness, injury or disease and without which the death, illness, injury or disease would not have occurred.

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 opposing evidence.

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

Willful Neglect—An act or acts of omission or of commission that evidence a reckless or wanton disregard for their attendant consequences. 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. The same as gross negligence.

Attachment 2

INSTRUCTIONS FOR PREPARING AIR FORCE FORM 348

A2.1. Medical Officer. Completes Items 1 through 12 on the front of AF Form 348 and signs the form.

A2.1.1. Enter the organization and location of member's immediate commander in the "TO" block.

A2.1.2. Enter the organization and location of the MPF/DPMP that supports the member's immediate commander in the "THRU" block.

A2.1.3. Item 9-10. If the member was first seen by a civilian healthcare provider or a medical officer from another military installation, obtain these initial medical records.

A2.1.4. Item 11. Give a complete description of alleged circumstances as the available information permits.

A2.1.5. The medical officer must sign the form. In those locations where only a medical technician is in attendance at the Air Force unit, the technician may sign the form but must note there is no AF medical officer assigned at the remote location.

A2.1.6. The medical officer does not make a recommendation of whether or not the death, illness, injury or disease was in the line of duty.

A2.2. Immediate Commander. Completes Items 13 through 17 on the back of AF Form 348.

A2.2.1. Enter the organization and location of the appointing authority in the "To" block.

A2.2.2. Enter the organization and location of the SJA who supports the immediate commander in the "Thru" block.

A2.2.3. Item 13. Relates to the actual duty status of the member at the time the death, illness, injury or disease occurred. A member who performs 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;" is "absent without authority" as defined in [Attachment 1](#); or the member fits one of the special situations which apply only to ARC members. Commanders of newly arriving members with treatment for an illness, injury or disease prior to the move, but before the initiation of an AF Form 348, may have to consult with the member's former organization to determine the member's duty status at the time.

A2.2.4. Item 14. Record completely and concisely the circumstances surrounding the death, illness, injury or disease based on the immediate commander's informal investigation. DO NOT SAY "SEE ITEM 11." If you need more space, use plain bond paper and identify it as item 14. Include the type of tour and the inclusive tour dates for ARC members.

A2.2.5. Item 15. Check appropriate block. If intentional misconduct or willful neglect of the member was not the proximate cause, check "neither of these" and specify the proximate cause. Refer to [Attachment 1](#) for explanation of terms.

A2.2.6. Item 16. Do not give "names and addresses" if the source of the information is the member or the police. Do not repeat names and addresses already appearing in item 12.

A2.2.7. Item 17. Check either Block A. Recommended Finding is “In Line of Duty” or Block B. Recommend a Formal Investigation. For ARC members, check one of the four blocks. The Immediate Commander must date and sign the form.

A2.3. Item 18. Staff Judge Advocate Instructions:

A2.3.1. Concur or non-concur with the immediate commander’s recommended findings, and date and sign the form.

A2.3.2. For active duty members, if the SJA concurs with the immediate commander’s recommended finding of “In the Line of Duty,” this recommendation is finalized. The form should be returned to the commander. In all other cases, the form is forwarded to the appointed authority.

A2.4. Item 19. Appointing Authority Instructions:

A2.4.1. For active duty members, if the appointing authority finds “In Line of Duty,” this is a final determination and the form is returned to the commander.

A2.4.2. If the appointing authority opts to appoint an investigating officer a formal investigation must be initiated.

A2.4.3. For ARC members, the appointing authority checks one of the four blocks.

A2.5. Item 20. ARC Approving Authority Instructions:

A2.5.1. ARC cases only. Review those cases involving “Questionable Circumstances” as outlined by paragraph **3.12.1.3**. Concur or non-concur with the appointing authority’s finding.

A2.5.2. If the approving authority nonconcur with the appointing authority’s findings, he or she checks one of the four blocks listed below.

Attachment 3

GUIDE FOR INVESTIGATING OFFICERS

A3.1. Duty. The IO will attempt to determine all the facts leading up to and connected with a death, injury, illness, or disease and render a comprehensive detailed report, which includes recommended findings of whether or not the death, illness, injury or disease occurred in the line of duty. The report must contain enough pertinent data to enable later reviews to be made without additional information.

A3.2. Investigating the Circumstances. The IO will ascertain dates, places, persons and events definitely and accurately.

A3.2.1. Consult with the Staff Judge Advocate. The IO should consult with the SJA before beginning the investigation and as often as necessary during the investigation.

A3.2.2. Secure Reports. The IO should obtain copies of all pertinent records including:

A3.2.2.1. All relevant facts with respect to the duty, leave, pass or unauthorized absence status of the member at the time of the incident resulting in death, illness, injury or disease. When the subject is a member of the USAFR or ANGUS, include information as to his or her status in relation to EAD, ADT, IDT, etc., at the time of the incident.

A3.2.2.2. All relevant military police reports, including extracts of summaries of the OSI.

A3.2.2.3. All relevant civilian police reports. While civilian agencies will make traffic investigations available to an IO, OSI assistance may be necessary to obtain civilian reports of criminal investigations.

A3.2.2.4. All relevant medical reports including analysis of blood, breathe, urine and tissue.

A3.2.2.5. When relevant, information concerning the site and terrain at which the incident in question occurred, and photographs, maps, charts, diagrams or other exhibits which may be helpful to a complete understanding of the incident.

A3.2.2.6. For cases involving suicide attempts or suicide gestures, obtain a copy of the mental health evaluation. If there has been no evaluation and one is necessary, have the member's commander or the appointing authority request one. Collect evidence bearing on the mental condition of the member, including evidence of actions or moods immediately before the incident, and any problems that might motivate the act.

A3.2.3. Secure Statements.

A3.2.3.1. Statement of Subject. The report of investigation must contain the sworn statement of the subject of the investigation or an explanation why the statement could not be obtained.

A3.2.3.2. Advising Subject of Rights.

A3.2.3.2.1. Section 1219 Rights. In all cases, the subject of the investigation must be advised before being interviewed that Title 10, U.S.C., Section 1219 states:

“A member of an armed force may not be required to sign a statement relating to the origin, incidence, or aggravation of a disease or injury that (he)(she) has. Any such statement against (his)(her) interests, signed by a member, is invalid.” A member's right 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.

A3.2.3.2.2. Article 31 Rights. Advise the subject of his or her rights under Article 31, UCMJ, only if you suspect the commission of an offense. Consult with the SJA on the form of the advice.

A3.2.3.3. Witness Statements. Obtain statements of witnesses with relevant information. If witnesses are not available for personal interview, obtain copies of available sworn or unsworn statements made by those witnesses to other investigators. If no such statements are available, arrange where possible, for others to take the statements. See [Attachment 4](#), Sample Format for Statements.

A3.2.3.4. Advising Witnesses.

A3.2.3.4.1. Section 1219 Rights. Do not apply to witnesses.

A3.2.3.4.2. Article 31 Rights. Do not apply to civilian witnesses. Advise a military witness of his or her rights under Article 31, Uniform Code of Military Justice (UCMJ) only when you suspect the commission of an offense. Consult with the SJA on the form of the advice.

A3.2.4. Develop the Facts. When alcohol is concerned in an investigation, thoroughly explore the part it played. Pertinent questions which should be resolved are the amount and type of liquor consumed; period of time during which it was consumed; outward appearance of the person before the incident (staggering, bellicose, unable to speak rationally, etc.). Include the results of any alcohol tests taken shortly after the incident in question.

A3.3. Making the Determination. A member's death, illness, injury or disease is presumed in line of duty unless the preponderance of the evidence shows that the death, illness, injury or disease, occurred while the member was absent without authority or was proximately caused by the member's own misconduct.

A3.3.1. Duty Status Determination. A death, illness, injury or disease incurred while a member is absent without authority is "not in line of duty." It does not matter whether the death, illness injury or disease was or was not the result of the member's misconduct.

A3.3.1.1. Rely on the immediate commander's finding (AF Form 348, item ____ or ____) that the member was "present for duty" or was "absent with authority" unless there is evidence to the contrary.

A3.3.1.2. Inquire further into the facts and circumstances of the member's duty status when the immediate commander finds (AF Form 348, item ____ or ____) the member was "absent without authority," or where there is evidence to indicate the commander's finding of "present for duty" or "was absent with authority" is incorrect. For the definition of the term "absent without authority" see [Attachment 1](#), Terms.

A3.3.2. Misconduct Determination. Determine whether misconduct was or was not the proximate cause of the member's death, illness, injury or disease. For explanation of the terms "misconduct" and "proximate cause" see [Attachment 1](#).

A3.4. Compiling the Report .

A3.4.1. DD Form 261, **Report of Investigation, Line of Duty and Misconduct Status**. Serves as a cover sheet and forwarding document. Complete lines 1-12 of the form.

A3.4.2. IO Report. At the conclusion of the investigation, the IO prepares a narrative report. The report should include a statement of the authority under which the investigation was conducted, identification of any duty time lost, the matter investigated, the facts, a discussion of those facts as they relate to the issues under investigation, conclusions, and a statement of findings. The IO should clarify any discrepancy in the date and place of death, illness, injury or disease or in the evidence as to the duty status of the member. When relevant, comment on the credibility of statements of witnesses.

A3.4.3. Supporting Documents. All documents in the report must be of good quality. Original documents should be in the report if at all possible. The documents should be assembled as follows:

DD Form 261 as cover sheet - two copies

Tab A - Index of exhibits

Tab B - IO summary - two copies

Tab C - IO appointing documents

Tab D - AF Form 348

Tab E - Subject's sworn statement, or IO certificate explaining why subject's statement unavailable.

Tab F - Statements of witnesses.

Tab G - Copies of orders or other documents relating to duty status

Tab H - Copies of other investigative reports prepared by military or civilian authorities

Tab I - Maps, photographs or sketches

Tab J - Medical records relevant to the LOD determination

A3.4.3.1. The IO may add additional tabs as needed. If 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 still appear in the index with the notation "No exhibit, this tab."

A3.5. Forwarding the Documentation. The IO will send the completed report to the appointing authority.

Attachment 4

SAMPLE FORMAT FOR STATEMENTS

A4.1. Statement of Subject of Investigation.

I, _____ (name) _____, _____ (grade) _____, _____ (address) _____, am aware 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 Title 10, U.S.C., Section 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) interests, signed by 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 whether or not my injury or disease occurred in the line of duty.

(I have also been advised of my rights under Article 31 of the UCMJ [see note 1]).

I make and sign the following sworn statement voluntarily and with this understanding:

(Body of Statement)

(Signature of member, SSN)

Subscribed and sworn to before me this _____ day of _____, 20____.

(Signature of person administering the oath [see note 2])

AUTHORITY: Title 5, U.S.C. Section 2108, 3309-3315, and 8140; Title 10, U.S.C., Sections 507, 972, 1074, 1201-12221; Title 37, U.S.C., Sections 204, 403, 802; Title 38, U.S.C., Sections 1110, 1131, 1710, 1712.

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 committing an offense.
2. The investigating officer, any person authorized by Title 10, U.S.C., Section 936, or a notary public, may administer the oath. Enter the typed or printed name, grade, or organization or, if a notary, the notary's identification under the signature block.

A4.2. Statement of a Military Witness Other Than the Subject of the Investigation.

I, _____ (name) _____, _____ (grade) _____, _____ (address) _____,

(have been advised of my rights under Article 31 of the UCMJ, [see note 1])

am aware 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 _____, 20____.

(Signature of person administering the oath [see note 3])

AUTHORITY: Title 5, U.S.C., Section 2108, 3309-3315, and 8140; Title 10, U.S.C., Sections 507, 972, 1074, 1201-12221; Title 37, U.S.C., Sections 204, 403, 802; Title 38, U.S.C., Sections 1110, 1131, 1710, 1712.

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 illness, injury, disease, or death occurred. The information will be filed in the member's master personnel record group and the member will be given 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 the military member is not suspected of committing an offense.
2. After explaining the purpose and importance of the investigation, request the military witness 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 can rely upon those rights provided by Article 31 of the UCMJ, when requested or ordered to disclose information that might tend to be self-incriminating. Before ordering a military witness to disclose information, the investigating officer should consult with the staff judge advocate.
3. The investigating officer, any person authorized by Title 10, U.S.C. Section 936, or a notary public, may administer the oath. Enter the typed or printed name, grade, or organization or, if a notary, the notary's identification under the signature block.

A4.3. Statement of a Civilian Witness.

I, _____ (name) _____, _____ (address) _____, am aware 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 _____, 20____.

(Signature of person administering the oath [see note 1])

AUTHORITY: Title 5, U.S.C., Section 2108, 3309-3315, and 8140; Title 10, U.S.C., Sections 507, 972, 1074, 1201-12221; Title 37, U.S.C., Sections 204, 403, 802; Title 38, U.S.C., Sections 1110, 1131, 1710, 1712.

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 illness, injury, disease or death occurred. The information will be filed in the member's master personnel record group and the member 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.

NOTE:

1. The investigating officer, any person authorized by Title 10, U.S.C., Section 936, or a notary public, may administer the oath. Enter the typed or printed name, grade, or organization or, if a notary, the notary's identification under the signature block.

Attachment 5

LOD DETERMINATIONS FOR VARIOUS SITUATIONS

A5.1. Alcohol Abuse. Drinking, drunkenness, and alcoholism by themselves are not illnesses, diseases or injuries requiring an LOD determination to be initiated. They may more properly require punitive or other administrative action.

A5.1.1. Initiate an LOD determination when the member suffers an illness, injury or disease because of alcohol abuse.

A5.1.1.1. An injury incurred during the intemperate use of alcohol should be found to be “due to misconduct” if it is proven that the intemperate use of alcohol was the proximate cause of the injury.

A5.1.1.2. Any acute or transient disease directly caused by or immediately following the intemperate use of alcohol should be found to be “due to misconduct.” However, an organic chronic disease that is secondary to alcoholism, such as Laennec’s cirrhosis, fatty metamorphosis of the liver, and chronic brain syndrome, should be found to be “in line of duty.”

A5.2. Drug Abuse. Drug abuse itself is not considered to be a disease or an injury for the purpose of requiring an LOD determination to be initiated.

A5.2.1. Initiate an LOD determination when the member suffers an illness, injury, disease, or death because of drug abuse.

A5.2.2. Drug abuse is strong evidence of misconduct. Illness, injury, disease or death proximately caused by drug abuse should be found to be “due to misconduct.” This includes the debilitating effect the drug has on the body and the effect the drug has 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.

A5.2.2.1. Illness, injury, disease or death resulting from drug abuse may be found “due to own misconduct” even though the drug abuse was made known as a result of the limited privilege communication program, identification through urinalysis, or incident to medical care for other than drug abuse.

A5.3. 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.

A5.4. 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 fight, is evidence of misconduct. Additional evidence of misconduct includes provocative actions or language taken or uttered under circumstances where a reasonable person would anticipate retaliation.

A5.4.1. There is no misconduct if a member is a victim of an unprovoked assault or acts in self-defense. Misconduct may not always be the proximate cause of injury caused by excessive

means. For example where a fight is underway and an adversary uses an excessive means that, under the circumstances, could not reasonably be foreseen.

A5.4.1.1. However, there can be a causal connection between the misconduct and the injury or death where a member persists in a fight or other encounter knowing that an adversary has produced a dangerous weapon. Determine each case on its own facts.

A5.5. Joint Ventures, Imputed Misconduct. A member can be held responsible for the misconduct of another if the member exercises control over, and is responsible for, the conduct of the principal actor, or if the circumstances demonstrate coordinated 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 holding the member responsible for the misconduct of another. There is no obligation to exert a positive or constructive influence over the conduct of the principal actor.

A5.6. Motor Vehicle Accidents.

A5.6.1. A member who operates a motor vehicle in an intentionally wrongful or negligent manner that was the proximate cause of an illness, injury, disease or death may be found to have engaged in misconduct.

A5.6.2. A member who knew or should have reasonably known he or she was unfit to drive, and who is injured as a result of driving a motor vehicle when unfit to do so, may be found to have engaged in misconduct. The test for misconduct is whether a reasonable person, under circumstances and conditions similar to those under which the member drove, would or would not have undertaken to drive and whether having elected to drive, the member's actions constitute intentional misconduct or willful neglect.

A5.6.2.1. Voluntary intoxication, use of drugs, or other circumstances that affect the member's mental or physical faculties cause a member to be unfit.

A5.6.2.2. It is not necessarily misconduct when a member has a motor vehicle accident because he or she fell asleep while driving.

A5.6.3. Illness, injury, disease or death incurred while not wearing safety devices such as seat belts or safety helmets is one factor to consider. Standing alone, the violation of a safety standard or regulation constitutes only simple negligence. The violation must, under the circumstances, amount to gross, willful, or wanton carelessness to constitute misconduct.

A5.6.3.1. The failure to use safety devices may have nothing to do with the proximate cause of the illness, injury, disease, or death. For example, the failure to wear a safety helmet may have nothing to do with a motorcyclist who breaks a leg.

A5.6.3.2. In other cases, failure to use safety devices can aggravate the illness, injuries, or disease but will not be the proximate cause of the illness, injuries, disease or death.

A5.6.3.3. Do not focus solely upon whether or not the member was wearing seat belts or other protective devices at the time of the accident, instead carefully examine the facts and circumstances of each case.

A5.7. Participation in Inherently Hazardous Off-Duty Activities. An LOD Determination for a member who participated in inherently hazardous off-duty activities is evaluated the same way as any

other case. Consider the nature of the activity, its inherent hazards, and the prior training and experience of the member.

A5.8. Pregnant Members. Do not perform an LOD determination for pregnancy or for any diagnosis associated with pregnancy. Make an LOD determination if the member is unable to do her duties for more than 24 hours; or there is a likelihood of a permanent disability, or in cases involving an induced abortion in violation of the law of the location of the abortion.

A5.9. Refusal or Failure to Seek Medical or Dental Treatment. Consider as misconduct, unreasonable refusing, or failing through willful neglect or by design to submit to medical, surgical, or dental treatment, which proximately causes illness, injury, disease or death even though misconduct did not cause the original condition.

A5.10. Residual Effects of Surgery or Treatment. Normal disability resulting from the surgery or treatment incurred “not in line of duty” is likewise “not in line of duty”. However, you may find unanticipated residuals from the surgery or treatment, as incurred “in line of duty.”

A5.11. Resisting Arrest/Escape From Custody. Consider any illness, injury, disease or death resulting from resisting arrest or trying to escape from custody a result of the member’s own misconduct. The member can reasonably anticipate the use of necessary force, even excessive force, to restrain him or her. One who engages in such activities acts in disregard of personal safety.

A5.12. Suicide Attempts and Suicidal Gestures. When a member makes a suicide attempt or suicidal gesture, obtain evidence on the question of mental responsibility including an expert psychiatric evaluation. Consider all evidence bearing on suicide attempt or suicidal gesture and any problem that might serve as motivation for the incident.

A5.12.1. A bona fide suicide attempt, in the absence of any intervening misconduct, raises a strong inference of lack of mental responsibility because of the instinct for self-preservation. A bona fide suicide attempt is sufficient evidence to rebut the presumption that the member was mentally responsible.

A5.12.2. Intentionally self-inflicted illness, injury or disease, not prompted by a bona fide suicide attempt, is at most, a suicidal gesture. Such illness, injury or disease may be the result of the member’s own misconduct, unless a lack of mental responsibility can be shown.

A5.13. Venereal Disease. The fact that a member has a venereal disease is not, by itself, evidence of misconduct.

Attachment 6**SAMPLE FORMAT OF MEMBER NOTIFICATION OF NOT IN LINE OF DUTY
DETERMINATION**

Date

MEMORANDUM FOR: (Member's Name)

FROM:(Immediate Commander)

SUBJECT: Notification of Finding of Not in Line Of Duty Determination under AFI 36-2910

This letter serves to notify you that (Name of Approving Authority), Approving Authority under AFI 36-2910, has determined that your (describe illness, injury or disease at issue) occurred "Not in Line of Duty". This determination was reached after review of a formal investigation of the circumstances of your injury or disease. This determination can be reconsidered only if you notify (Name of Appointing Authority), in writing, of new and significant evidence that indicates a likelihood of error in the determination. Such a request for reconsideration must be made within 45 days of receipt of this notification.

(Commander's Signature Block)

Attachments:

Copy of Case File

Attachment 7

**SAMPLE FORMAT OF NOTIFICATION OF NOT IN LINE OF DUTY
DETERMINATION IN DEATH CASES**

Date

MEMORANDUM FOR: (Name of Next of Kin)

FROM:(Immediate Commander)

SUBJECT: Notification of Finding of Not in Line Of Duty Determination under AFI 36-2910

This letter serves to notify you that (Name of Approving Authority), Approving Authority under AFI 36-2910, has determined that (member's name) death occurred "Not in Line of Duty". This determination was reached after review of a formal investigation of the circumstances of (his)(her) death.

The National Defense Authorization Act for Fiscal Year 202, section 643, provides that a member's dependents may be eligible for benefits under the Survivor Benefit Plan, as long as the member's death was found to be "In Line of Duty". As a result of the determination that (member's name) was "Not in Line of Duty", (his) (her) dependents will not be eligible for benefits under this plan.

This determination can be reconsidered only if you notify (Name of Appointing Authority), in writing, of new and significant evidence that indicates a likelihood of error in the determination. Such a request for reconsideration must be made within 45 days of receipt of this notification.

(Commander's Signature Block)

Attachments:

Copy of Case File

Attachment 8

SAMPLE AF FORM 348, LINE OF DUTY DETERMINATION

LINE OF DUTY DETERMINATION			
TO: <i>(Immediate Commander)</i> 123 SUP/CC		THRU: 123 MPF/DPMP	FROM: 123MG
1. NAME <i>(Last, First, Middle Initial)</i> Able, Aaron A.		2. SSN 123-45-6789	3. GRADE E-2
4. ORGANIZATION 123 SUPS			
5. MEMBER'S STATUS: <input type="checkbox"/> AD AF <input type="checkbox"/> ARC <input type="checkbox"/> AFROTC Cadet <input type="checkbox"/> USAFA Cadet			
6. NATURE AND EXTENT OF <input type="checkbox"/> DISEASE <input checked="" type="checkbox"/> INJURY <input type="checkbox"/> DEATH Mid back pain radiating up to his neck.			
7. NAME AND LOCATION OF <input checked="" type="checkbox"/> MILITARY <input type="checkbox"/> CIVILIAN HOSPITAL OR TREATMENT FACILITY FIRST PROVIDED TREATMENT Orville Air Force Base, Somewhere, Somestate			
8. TREATMENT PROVIDED: HOUR 09:00 DATE 2002 01 02			
9. MEDICAL OPINION OF MEMBER'S CONDITION WHEN FIRST TREATED: A. <input type="checkbox"/> WAS <input checked="" type="checkbox"/> WAS NOT UNDER THE INFLUENCE OF ALCOHOL. <i>(See AFI 36-2910, Explanation of Terms)</i> B. <input type="checkbox"/> WAS <input checked="" type="checkbox"/> WAS NOT UNDER THE INFLUENCE OF A DRUG-INDUCING MARIJUANA <i>(See AFI 36-2910, Explanation of Terms)</i> IF MEMBER WAS UNDER THE INFLUENCE OF A DRUG, SPECIFY WHAT KIND _____ C. <input type="checkbox"/> UNABLE TO DETERMINE BECAUSE OF PHYSICAL CONDITION D. <input checked="" type="checkbox"/> WAS <input type="checkbox"/> WAS NOT MENTALLY RESPONSIBLE E. SPECIFY ANY OTHER CONDITION DEEMED RELEVANT _____			
10. TESTS A. BLOOD ALCOHOL TEST <input type="checkbox"/> WAS <input checked="" type="checkbox"/> WAS NOT MADE. IF MADE, STATE RESULTS: _____ B. PSYCHIATRICAL EVALUATION <input type="checkbox"/> HAS <input checked="" type="checkbox"/> HAS NOT BEEN CONDUCTED. C. ANY OTHER TESTS AND RESULTS <i>(Specify):</i> _____			
11. DETAILS OF ACCIDENT OR HISTORY OF DISEASE: Patient reports the car in which he was a passenger, was rear-ended on 2 Jan 02. Immediately afterward he experienced pain in the middle of his back.			
12. SOURCES OF INFORMATION A. <input checked="" type="checkbox"/> MEMBER <input type="checkbox"/> POLICE <input type="checkbox"/> WITNESS(ES) <input type="checkbox"/> OTHER <i>(Specify):</i> _____		B. NAME(S) AND ADDRESS(ES) OF WITNESS(ES) _____ _____ _____ _____	
DATE 2002 02 03	TYPED NAME AND GRADE OF MEDICAL OFFICER Ben Better, Maj, USAF	SIGNATURE	

Sample AF Form 348 (Continued.)

TO: (Appointing Authority) 123 LG/CC	THRU: (SJA) 123 FTW/JA	FROM: (Immediate Commander) 123 SUPS/CC
13. AT THE TIME OF THIS OCCURRENCE, THE MEMBER WAS: A. <input type="checkbox"/> PRESENT FOR DUTY B. <input type="checkbox"/> ABSENT WITH AUTHORITY C. <input type="checkbox"/> ABSENT WITHOUT AUTHORITY FOR MORE THAN 24 HOURS D. <input checked="" type="checkbox"/> ABSENT WITHOUT AUTHORITY FROM (HOUR AND DATE) <u>20:00</u> / <u>2002 02 01</u> TO (HOUR AND DATE) <u>20:00</u> / <u>2002 03 01</u> E. NEITHER PRESENT FOR DUTY, ABSENT WITH AUTHORITY NOR ABSENT WITHOUT AUTHORITY BUT WAS: <input type="checkbox"/> ARC ONLY, TRAVELING TO OR FROM INACTIVE DUTY TRAINING. <input type="checkbox"/> TRAVELING TO OR FROM DUTY OR TRAINING AND HAD MATERIALLY DEVIATED FROM AUTHORIZED TRAVEL ROUTE.		
14. AS A RESULT OF MY INVESTIGATION, I HAVE DETERMINED THE CIRCUMSTANCES TO BE AS FOLLOWS: (Who, how, when, where, why) On 1 Feb 02 at 2000, the vehicle Amn Abel was traveling in stopped at a traffic light west bound on Center Street, Centerville, Somestate. A vehicle driven by Mr. Zachary Zoom struck the vehicle causing damage to the first car and injury to Amn Abel. Amn Abel was wearing his seat belt at the time of the accident.		
15. THE PROXIMATE CAUSE OF THE MEMBER'S DEATH, DISEASE OR INJURY WAS <input type="checkbox"/> INTENTIONAL MISCONDUCT <input type="checkbox"/> WILLFUL NEGLIGENCE <input type="checkbox"/> BOTH OF THESE <input checked="" type="checkbox"/> NEITHER OF THESE BUT (Specify) Vehicle accident caused by another.		
16. SOURCES OF INFORMATION: A. <input type="checkbox"/> MEMBER <input type="checkbox"/> OSI <input checked="" type="checkbox"/> POLICE <input type="checkbox"/> WITNESS(ES) <input checked="" type="checkbox"/> OTHER (Specify) eyewitness Amy Jones		B. STATE NAME(S) AND ADDRESS(ES) OF WITNESS(ES): Officer Pam Policewoman, Centerville Police Station, Centerville Ollie Observer, Oak Ave, Centerville Amy Jones, Acorn Avenue, Centerville
17. AS A RESULT OF MY INVESTIGATION, A. <input checked="" type="checkbox"/> THE RECOMMENDED FINDING IS "IN LINE OF DUTY." B. <input type="checkbox"/> RECOMMEND A FORMAL INVESTIGATION. C. <input type="checkbox"/> ARC ONLY - THE RECOMMENDED FINDING IS "EPTS-LOD Not Applicable." D. <input type="checkbox"/> ARC ONLY - THE RECOMMENDED FINDING IS "EPTS-Service Aggravated."		
DATE 2002 03 05	TYPED NAME AND GRADE OF IMMEDIATE COMMANDER Charlie Commander, Lt Col, USAF	SIGNATURE
18. <input checked="" type="checkbox"/> CONCUR <input type="checkbox"/> NONCONCUR (ACTIVE DUTY. If concur with recommendation of "In Line of Duty," file this form in Master Personnel Records, AFI 36-2910 (Line of Duty (Misconduct) Determination). Otherwise, forward to Appointing Authority.)		
DATE 2002 03 06	TYPED NAME AND GRADE OF STAFF JUDGE ADVOCATE Dee Dee Dunright, Capt 123 TFW/JA	SIGNATURE
19. ACTION OF THE APPOINTING AUTHORITY: A. <input checked="" type="checkbox"/> THE FINDING IS "IN LINE OF DUTY." B. <input type="checkbox"/> APPOINT INVESTIGATING OFFICER. C. <input type="checkbox"/> ARC ONLY, "EPTS - LOD Not Applicable." D. <input type="checkbox"/> ARC ONLY, "EPTS - Service Aggravated."		
DATE 2002 03 07	TYPED NAME AND GRADE OF APPOINTING AUTHORITY Jimmy Crack Corn, Colonel, USAF 123 TFW/DO	SIGNATURE

Attachment 9**IC 2002-1 TO AFI 36-2910, LINE OF DUTY (MISCONDUCT) DETERMINATION****4 OCTOBER 2002*****SUMMARY OF REVISIONS***

This revision incorporates Interim Change IC 2002-1 TO AFI 36-2910. This change incorporates interim change (IC) 2002-1 (**Attachment 9**). This change requires an informal line of duty determination to be initiated in the case of each active duty death in order to fulfill requirements for Survivor Benefit Plan and Educational Assistance Death Benefits (sections **1.2.8.**; **1.5.1.**; **2.3.2.**). See the last attachment of the publication, IC 2002-1, for the complete IC. A “|” indicates revised material since the last edition.

OPR: HQ AFPC/JA (Maj Richard Desmond)

Supersedes AFI 36-2910, 16 April 2002.

Certified by: HQ AFPC/JA (Col Margaret McCord)

1.2.8. Basic Educational Assistance Death Benefit. Certain survivors of deceased members entitled to basic educational assistance may be entitled to death benefits (Title 37, U.S.C. 3017, *Death Benefit*).

1.5.1. The death of a member. In every case where a member dies on active duty, at a minimum, an AF Form 348 must be completed. An administrative determination is not sufficient in a case of death.

2.3.1.2.3. An illness or disease clearly not involving misconduct or caused by abuse of drugs or alcohol.

2.3.2. AF Form 348, Initiating an Informal Determination. If an LOD determination is required, but an administrative determination is not appropriate, the medical officer initiates AF Form 348. An Informal LOD must be initiated on AF Form 348 in every case of a member dying on active duty. The medical officer provides a narrative description of the member's medical condition but does not make an LOD determination. See **Attachment 2**, Instructions, AF Form 348.

Attachment 1

GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

References

Executive Order 9397, *Numbering System for Federal Accounts Relating to Individual Persons* Title 10, United States Code, *Armed Forces*, Section: 972, *Members: Effects of Time Lost*; 1074a, *Medical and Dental Care: Members on Duty Other Than Active Duty for a Period of More Than 30 Days*; 1201, *Regulars and members on active duty for more than 30 days: retirement*; 1203 *Regulars and members on active duty for more than 30 days: separation*; 1204, *Members on active duty for 30 days or less or on inactive-duty training: retirement*; 1206, *Members on active duty for 30 days or less or on inactive-duty training: separation*; 1207, *Disability from intentional misconduct or willful neglect: separation*; and 1448, *Application of Plan*).

Title 21, United States Code, *Food and Drugs*, Section: 812, *Schedules of controlled substances*.

Title 32, United States Code, *National Guard*, Section: 318 *Compensation for disablement during training*

Title 37, United States Code, *Pay and Allowances of the Uniformed Services*, Section: 204, *Entitlements*; 802, *Forfeiture of Pay During Absence from Duty Due to Disease from Intemperate Use of Alcohol or Drugs*; Section 3017, *Death Benefit*

Title 38, United States Code, *Veteran's Benefits*, Section: 1110, *Wartime Disability Compensation, Basic Entitlement*; 1131, *Peacetime Disability Compensation*

National Defense Authorization Act for Fiscal Year 2002, (Public Law 107-107), December 28, 2001, Section: 642, *Survivor Benefit Plan Annuities for Surviving Spouses of Members Who Die While on Active Duty and Not Eligible for Retirement*

AFPD 36-29, *Military Standards*

AFI 33-332, *Air Force Privacy Act Program*

AFI 37-139, *Records Disposition Schedule*

Abbreviations and Acronyms

AD—Active Duty

ADT—Active Duty for Training

AFI—Air Force Instruction

AFPD—Air Force Policy Directive

AFRC—Air Force Reserve Command

AFROTC—Air Force Reserve Officer Training Corps

ANG—Air National Guard

ARC—Air Reserve Component

EAD—Extended Active Duty
EO—Executive Order
EPTS—Existed Prior to Service
HQ AFPC—Headquarters Air Force Personnel Center
HQ ARPC—Headquarters Air Reserve Personnel Center
HQ AFRC—Headquarters Air Force Reserve Command
IDT—Inactive Duty for Training
IMA—Individual Mobilization Augmentee
IO—Investigating Officer
LOD—Line of Duty
LOD—MFP-Line of Duty Medical Focal Point
MperGp—Master Personnel Records Group
MPF—Military Personnel Flight
MTF—Military Training Flight
OSI—Office of Special Investigation
PIRR—Participating Individual Ready Reservists
SJA—Staff Judge Advocate
UCMJ—Uniform Code of Military Justice
USAFA—United States Air Force Academy
USAFR—United States Air Force Reserve

Terms

Active Duty—Full-time duty in the active military of the United States. A general term applied to all active military service with the active force without regard to duration or purpose.

Active Duty for Training (ADT)—A tour of active duty that is used for training members of the Reserve components to provide trained units and qualified persons to fill the needs of the Armed Forces in time of war or national emergency and such other times as the national security requires. The member is under orders that provide for return to nonactive status when the period of ADT is completed. It includes annual training, special tours of ADT, school tours, and the initial duty for training performed by nonprior service enlistees.

Absent Without Authority—Consider member “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 doing a specified task at a specified time and place for a specified purpose. It is not the same as regularly scheduled duty. Consider the member “absent without authority” if not excused and absent from duty in civil confinement for more than 24 hours. The term “absent without authority” is the same as “unauthorized absence.”

Administrative Determination—A determination by a medical officer that a member's death, illness, injury or disease occurred in the line of duty. This process can be used for only a limited number of instances including battle casualties, disease of natural origin, simple injury and conditions that existed prior to service.

Alcohol Abuse—The illegal or improper use or possession of alcohol, on or off duty, that results in, but is not limited to, impaired duty performance, intoxicated driving, domestic disturbances, assault, aberrant behavior, altercations, underage drinking, or other behavior inconsistent with Air Force standards.

Alcoholism—A psychological or physical dependence on alcohol.

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.

Drug Abuse—The illegal or improper use, possession, sale, transfer, or trafficking of any controlled substance included in Schedules I, II, III, IV, and V in Title 21, United States Code, Section 812, drug abuse paraphernalia, or any intoxicating substance, other than alcohol, that is inhaled, injected, consumed, or introduced into the body in any manner to alter mood or function.

Drugs—Any controlled substance included in Schedules I, II, III, IV, and V in 21 U.S.C. 812, including anabolic or androgenic steroids, or any intoxicating substance other than alcohol, that is inhaled, injected, consumed, or introduced into the body in any manner to alter mood or function.

Existed Prior to Service (EPTS)—Terms added to a medical diagnosis where there is clear evidence that a illness, injury, or disease, the underlying condition causing it, existed before the member's entry into military 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.

Hostile Casualty—A person who is the victim of a terrorist activity or who becomes a casualty "in action."

Inactive Duty Training (IDT)—Authorized training performed by a member of a Reserve Component not on active duty or active duty for training and consisting of regularly scheduled unit training assemblies, additional training assemblies, periods of appropriate duty or equivalent training, and any special additional duties authorized for Reserve Component personnel by the Secretary concerned, and performed by them in connection with the prescribed activities of the organization in which they are assigned with or without pay. Does not include work or study associated with correspondence course. Also called **IDT**.

Incapacitation Benefits—Entitlement for Reserve members to compensation for incapacitation or loss of civilian earnings as a result of an injury, illness or disease incurred or aggravated in the line of duty.

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 poisoning (except those due to contaminated food) resulting from exposure to toxic or poisonous substances are also injuries.

Intoxication—Maladaptive behavior such as aggressiveness, impaired judgment, and impaired social or occupational functioning, because of recent ingestion, inhalation, or injection of any substance into the

body. Signs include flushed face, slurred speech, unsteady gait, lack of coordination, impaired attention, irritability, euphoria or depression.

In Line of Duty—A death, illness, injury or disease suffered by a member is presumed to be in the line of duty, unless a preponderance of the evidence supports the finding that the member's death, illness, injury, or disease happened while the member was absent from duty without leave or due to the member's own misconduct. Confine the meaning of "line of duty" in this instruction to the purpose of this instruction. It is completely distinct from usage under the Federal Tort Claims Act, Title 28, U.S.C., Section 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.

Intentional Conduct—An act, by commission or omission, done on purpose.

Intervening Cause—An independent action occurring between the original wrongful act or omission and the death, illness, injury or disease, that turns aside the natural sequence of events, and produces a result which would not otherwise have followed and been foreseeable.

Lost Time—Time (if more than 24 hours) which must be made up (served) by an enlisted member who is unable to perform military duties because of intemperate use of drugs or alcohol, or because of illness, injury or disease resulting from misconduct.

Mental Responsibility—The capacity to understand when ones conduct is wrong and to conform ones conduct to the requirement of the law. All members are presumed mentally responsible for their acts, unless there is contrary evidence. This presumption usually means it is unnecessary to pursue the issue of mental responsibility unless there is credible evidence of lack of mental responsibility. Such evidence may consist of the circumstances surrounding the death, illness, injury or disease, previous abnormal or irrational behavior, expert opinion, or other evidence directly or indirectly pointing toward lack of mental responsibility. Members are not responsible for their misconduct and its foreseeable consequence if, as a result of mental disease or defect, they lack substantial capacity either to appreciate that their conduct is wrong or to conform the conduct to the requirements of law. The term "mental disease or defect" does not include an abnormality manifested only by repeated wrongful or otherwise antisocial behavior. Members with impaired mental faculties as a result of their own prior misconduct, such as by taking a hallucinogen, other illegal (controlled) substance, or deliberately ingesting any harmful/dangerous substance, are mentally responsible.

Misconduct—Intentional conduct that is wrongful or improper. Also, willful neglect or gross negligence.

Not in Line of Duty, Due to Own Misconduct—A determination supported by a preponderance of the evidence that the member's death, illness, injury or disease, was proximately caused by the member's own misconduct, regardless of whether the member was absent without authority.

Not in Line of Duty, Not Due to Own Misconduct—A determination supported by a preponderance of the evidence that the member's death, illness, injury or disease happened while the member was absent without authority, and the death, illness, injury, or disease was not proximately caused by the member's own misconduct.

Proximate Cause—It is the cause that, in a natural and continuous sequence unbroken by an independent and unforeseeable new cause, results in the death, illness, injury or disease and without which the death, illness, injury or disease would not have occurred.

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 opposing evidence.

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

Willful Neglect—An act or acts of omission or of commission that evidence a reckless or wanton disregard for their attendant consequences. 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. The same as gross negligence.